Calendar No. 501

101ST CONGRESS *2d Session*	SENATE	REPORT 101-262

DEPARTMENT OF THE ENVIRONMENT ACT OF 1990

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2006

TO ESTABLISH THE DEPARTMENT OF THE ENVIRONMENT, PROVIDE FOR A GLOBAL ENVIRONMENTAL POLICY OF THE UNITED STATES, AND FOR OTHER PURPOSES

together with

ADDITIONAL VIEWS

APRIL 2 (legislative day, JANUARY 23), 1990.—Ordered to be printed

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REPORT
101-262

DEPARTMENT OF THE ENVIRONMENT ACT OF 1990

APRIL 2 (legislative day, JANUARY 23), 1990.—Ordered to be printed

Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2006]

The Committee on Governmental Affairs, to which was referred the bill (S. 2006) to establish the Department of the Environment, provide for a global environmental policy of the United States, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Department of the Environment Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE I—GENERAL FINDINGS

Sec. 101. Findings.

TITLE II—ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY TO CABINET LEVEL

Sec. 201. Short title.
Sec. 202. Findings.
Sec. 203. Establishment of the Department of the Environment.
Sec. 204. Assistant Secretaries.
Sec. 205. Deputy Assistant Secretaries.
Sec. 206. Office of the General Counsel.
Sec. 207. Office of the Inspector General.
Sec. 208. Bureau of Environmental Statistics.
Sec. 209. Miscellaneous employment restrictions.
Sec. 210. Administrative provisions.
Sec. 211. Inherently governmental functions.
Sec. 212. References.
Sec. 213. Savings provisions.
Sec. 214. Conforming amendments.
Sec. 215. Additional conforming amendments.

TITLE III—ESTABLISHMENT OF THE INTERAGENCY COMMITTEE ON GLOBAL ENVIRONMENTAL CHANGE

Sec. 301. Findings.
Sec. 302. Establishment.
Sec. 303. Functions of the Committee.
Sec. 304. Relation to other laws.

TITLE IV—ENVIRONMENTAL ROLE OF THE UNITED STATES IN INTERNATIONAL ORGANIZATIONS TO WHICH IT BELONGS

Sec. 401. Findings.
Sec. 402. Multilateral lending considerations for energy conservation and environmental protection.
Sec. 403. International energy conference.
Sec. 404. Multilateral global climate protection convention.
Sec. 405. International greenhouse gas monitoring program.
Sec. 406. Relation to other laws.

TITLE V—ESTABLISHMENT OF THE COMMISSION ON IMPROVING ENVIRONMENTAL PROTECTION

Sec. 501. Findings.
Sec. 502. Establishment; membership.
Sec. 503. Commission responsibilities.
Sec. 504. Report to the President and Congress.
Sec. 505. Commission staff.
Sec. 506. Advisory groups.
Sec. 507. Funding; authorization of appropriations.

TITLE VI—EFFECTIVE DATE

Sec. 601. Effective date.

TITLE I—GENERAL FINDINGS

SEC. 101. FINDINGS.

The Congress finds that—

(1) the Earth's environment is being altered by human activities such as the generation of solid and toxic wastes, the generation of water and air pollution, inefficient energy utilization, and poor land management practices;

(2) these environmental effects have serious implications for the Earth's ecosystems, agricultural production, water supply, air quality, human health, wetlands, and climate;

(3) because it is important to improve the understanding of the processes and practices that generate pollution, the media by which it is transported, the mechanisms of human exposure, the kinds of adverse effects that are posed by pollution, and potential approaches for the reduction of risk, a long-term research program to identify environmental risk management options is necessary to guide the protection of the environment;

(4) Federal energy, natural resources, and environmental policies must be coordinated to take account of the fragility of the Earth's ecosystem; and

(5) adoption and implementation of a high-level, coordinated Federal policy which addresses the environment on a national and international level is necessary to protect the Earth's ecosystem.

TITLE II—ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY TO CABINET LEVEL

SEC. 201. SHORT TITLE.

This title may be cited as the "Department of the Environment Act."

SEC. 202. FINDINGS.

The Congress finds that—

(1) recent concern with Federal environmental policy has highlighted the necessity of assigning to protection of the domestic and international environment a priority which is at least equal to that assigned to other functions of the Federal Government;

(2) protection of the environment increasingly involves negotiations with foreign states, including the most highly industrialized states all of whose top environmental officials have ministerial status;

(3) the size of the budget and the number of Federal civil servants devoted to tasks associated with environmental protection is commensurate with departmental status; and

(4) a cabinet-level Department of the Environment should be established which has the primary responsibility with respect to matters affecting the environment, including developing, administering, and enforcing national environmental policy.

SEC. 203. ESTABLISHMENT OF THE DEPARTMENT OF THE ENVIRONMENT.

(a) REDESIGNATION.—The Environmental Protection Agency is hereby redesignated as the Department of the Environment (hereafter referred to as the "Department") and shall be an executive department in the executive branch of the Government. The official acronym of the Department shall be the "U.S.D.E.".

(b) SECRETARY OF THE ENVIRONMENT.—(1) There shall be at the head of the Department a Secretary of the Environment who shall be appointed by the President, by and with the advice and consent of the Senate. The Department shall be administered under the supervision and direction of the Secretary.

(2) The Secretary may not assign duties for or delegate authority for the supervision of the Assistant Secretaries, the General Counsel, the Director of Environmental Statistics, or the Inspector General of the Department to any officer of the Department other than the Deputy Secretary.

(3) Except as described under paragraph (2) of this section and section 204(b)(2), and notwithstanding any other provision of law, the Secretary may delegate any functions including the making of regulations to such officers and employees of the Department as the Secretary may designate, and may authorize such successive redelegations of such functions within the Department as determined to be necessary or appropriate.

(c) DEPUTY SECRETARY.—There shall be in the Department a Deputy Secretary of the Environment, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall perform such responsibilities as the Secretary shall prescribe and shall act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the Office of Secretary.

(d) OFFICE OF THE SECRETARY.—The Office of the Secretary shall consist of a Secretary and a Deputy Secretary and may include an Executive Secretary and such other executive officers as the Secretary may determine necessary.

(e) REGIONAL OFFICES.—The Secretary is authorized to establish, alter, discontinue, or maintain such regional or other field offices as he may determine necessary to carry out the functions vested in him or other officials of the Department.

(f) INTERNATIONAL RESPONSIBILITIES OF THE SECRETARY.—(1) In addition to exercising other international responsibilities under existing provisions of law, the Secretary is—

(A) encouraged to assist the Secretary of State to carry out his primary responsibilities for coordinating, negotiating, implementing and participating in international agreements, including participation in international organizations, relevant to environmental protection; and

(B) authorized and encouraged to—

(i) conduct research on the nature and impacts of international environmental problems and how to respond to such problems; and

(ii) provide technical and other assistance to foreign countries and international bodies to improve the quality of the environment.

(2) The Secretary of State shall consult with the Secretary of the Environment on such negotiations, implementations, and participations described under paragraph (1)(A).

SEC. 204. ASSISTANT SECRETARIES.

(a) ESTABLISHMENT OF POSITIONS.—There shall be in the Department such number of Assistant Secretaries, not to exceed 10, as the Secretary shall determine, each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES OF ASSISTANT SECRETARIES.—(1) The Secretary shall assign to Assistant Secretaries such responsibilities as the Secretary considers appropriate, including, but not limited to—

(A) enforcement and compliance monitoring;
(B) research and development;
(C) air and radiation;
(D) water;
(E) pesticides and toxic substances;
(F) solid waste;
(G) hazardous waste;
(H) hazardous waste cleanup;
(I) emergency response;
(J) international affairs;
(K) policy, planning, and evaluation;
(L) pollution prevention;
(M) congressional, intergovernmental, and public affairs; and
(N) administration and resources management, including financial and budget management, information resources management, procurement and assistance management, and personnel and labor relations.

(2) The Secretary may assign and modify any responsibilities at his discretion under paragraph (1), except that the Secretary may not modify the responsibilities of any Assistant Secretary without substantial prior written notification of such modification to the appropriate committees of the Senate and the House of Representatives.

(c) DESIGNATION OF RESPONSIBILITIES PRIOR TO CONFIRMATION.—Whenever the President submits the name of an individual to the Senate for confirmation as Assistant Secretary under this section, the President shall state the particular responsibilities of the Department such individual shall exercise upon taking office.

(d) CONTINUING PERFORMANCE OF FUNCTIONS.—On the effective date of this Act, the Administrator and Deputy Administrator of the Environmental Protection Agency shall be redesignated as the Secretary and Deputy Secretary of the Department of the Environment, Assistant Administrators of the Agency shall be redesignated as Assistant Secretaries of the Department, and the General Counsel and the Inspector General of the Agency shall be redesignated as the General Counsel and the Inspector General of the Department, without renomination or reconfirmation.

(e) CHIEF FINANCIAL OFFICER.—(1) The Secretary shall designate the Assistant Secretary whose responsibilities include overseeing the financial operations of the Department as the Chief Financial Officer of the Department. Such individual shall be selected on a basis of demonstrated ability in financial management and other management areas.

(2) The Chief Financial Officer shall—

(A) be the principal financial management advisor to the Secretary;

(B) develop and maintain financial management systems for the Department, including accounting and related transactions systems, internal control systems, financial reporting systems, credit, cash, and debt management systems which would provide for the—

(i) development and maintenance of consistent, compatible and useful financial data;

(ii) development and reporting of cost information; and

(iii) integration of accounting and budget information;

(C) supervise and coordinate all financial management activities and operations of the Department, including—

(i) the development of financial management budgets;

(ii) the approval and management of financial management system design or enhancement projects;

(iii) management of internal control processes;

(iv) the development of long-range financial management plans; and

(v) oversight over credit and cash management, credit extension, debt servicing, debt collection, and other credit management activities;

(D) monitor the financial execution of the Department's budget in relation to actual expenditures and prepare timely performance reports for senior managers; and

(E) issue such policies or directives as may be necessary to carry out this section.

(f) CHIEF INFORMATION RESOURCES OFFICER.—(1) The Secretary shall designate the Assistant Secretary whose responsibilities include information resource management functions as required by section 3506 of title 44, United States Code, as the Chief Information Resources Officer of the Department.

(2) The Chief Information Resources Officer shall—

(A) advise the Secretary on information resource management activities of the Department as required by section 3506 of title 44, United States Code;

(B) develop and maintain an information resources management system for the Department which provides for—

(i) the conduct of and accountability for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759);

(ii) the implementation of all applicable government-wide and Department information policies, principles, standards, and guidelines with respect to information collection, paperwork reduction, privacy and security of records, sharing and dissemination of information, acquisition and use of information technology, and other information resource management functions;

(iii) the periodic evaluation of and, as needed, the planning and implementation of improvements in the accuracy, completeness, and reliability of data and records contained with Department information systems; and

(iv) the development and annual revision of a 5-year plan for meeting the Department's information technology needs; and

(C) report to the Secretary as required under section 3506 of title 44, United States Code.

SEC. 205. DEPUTY ASSISTANT SECRETARIES.

(a) ESTABLISHMENT OF POSITIONS.—There shall be in the Department such number of Deputy Assistant Secretaries as the Secretary may determine.

(b) APPOINTMENTS.—Each Deputy Assistant Secretary—

(1) shall be appointed by the Secretary; and

(2) shall perform such functions as the Secretary shall prescribe.

(c) MINIMUM NUMBER OF DEPUTY ASSISTANT SECRETARY POSITIONS IN THE CAREER SENIOR EXECUTIVE SERVICE.—At least one-half of the number of positions established under subsection (a) and filled under subsection (b) shall be in the career Senior Executive Service.

(d) FUNCTIONS.—(1) Subject to paragraph (2), functions assigned to an Assistant Secretary under section 204(b) may be performed by one or more Deputy Assistant Secretaries appointed to assist such Assistant Secretary.

(2) The following functions may be performed by a Deputy Assistant Secretary only if such Deputy Assistant Secretary is in a career Senior Executive Service position:

(A) Personnel management and labor relations functions.

(B) Equal opportunity functions.

SEC. 206. OFFICE OF THE GENERAL COUNSEL.

There shall be in the Department the Office of the General Counsel. There shall be at the head of such office a General Counsel who shall be appointed by the President, by and with advice and consent of the Senate. The General Counsel shall be the chief legal officer of the Department and shall provide legal assistance to the Secretary concerning the programs and policies of the Department.

SEC. 207. OFFICE OF THE INSPECTOR GENERAL.

The Office of Inspector General of the Environmental Protection Agency, established in accordance with the Inspector General Act of 1978, is hereby redesignated as the Office of Inspector General of the Department of the Environment.

SEC. 208. BUREAU OF ENVIRONMENTAL STATISTICS.

(a) ESTABLISHMENT.—(1) There is established within the Department an independent Bureau of Environmental Statistics (hereafter referred to as the "Bureau"). The Bureau shall be responsible for—

(A) collecting, analyzing, assembling, and reporting a comprehensive set of environmental quality measures, not necessarily limited to those aspects of the environment under jurisdiction of the Department; the measures should include (but are not limited to) data—

(i) on the nature and amount of pollutants in the environment; and

(ii) regarding the effects on the public and the environment of those pollutants;

(B) promulgating guidelines for the collection of the data required for the measures under paragraph (1) to assure that the data are accurate, reliable, relevant, and in a form that permits systematic analysis;

(C) coordinating the collection of such measures with related information-gathering activities conducted by other Federal agencies (except the Bureau shall not collect data if the Bureau can obtain that data more efficiently and with equal reliability from another agency and such other agency is already collecting such data);

(D) making readily accessible the data required for the measures under this paragraph;

(E) publishing, in accordance with the Bureau's primary responsibility as set forth under subparagraph (A), timely summary measures in the form of industry-wide aggregates, multiyear averages or totals or some similar form;

(F) gathering timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, to analyze and interpret such information and to compile and submit to the President studies relating to such conditions and trends; and

(G) coordinating with the appropriate Departmental research officials to identify missing data of the kind described under subparagraph (A) (i) and (ii), reviewing these information needs at least annually with the Science Advisory Board, and, assisting the appropriate Departmental research officials in maintaining extramural and intramural research programs to provide such information.

(2) Confidentiality of information collected by the Bureau of Environmental Statistics shall be governed by the same confidentiality provisions in the statutes which authorized the collection of such information, regardless of whether the statute is administered by the Secretary, and including but not limited to the provisions of section 14 of the Toxic Substances Control Act (15 U.S.C. 2613), section 2(h) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136h), section 114(c) of the Clean Air Act (42 U.S.C. 7414(c)), and section 1905 of title 18, United States Code.

(3) Any information published under the provisions of paragraph (1)(E) may not be published or released to the public in any form that permits the information provided by any person to be identified with such person. For purposes of this paragraph, the term "person" shall include individuals, corporations, or other entities, but shall not include governmental entities. This paragraph shall not affect the availability of data provided to the Department under any other provision of law administered by the Department.

(b) DIRECTOR OF ENVIRONMENTAL STATISTICS.—The Bureau shall be under the direction of a Director of Environmental Statistics (hereafter referred to as the "Director") who shall be appointed by the President, by and with the advice and consent of the Senate. The term of the Director shall be 4 years. The Director shall be a qualified individual with experience in the collection and analysis of environmental statistics. The Director shall report directly to the Secretary. The Director shall be compensated at the rate provided for at level V of the Executive Schedule under section 5316 of title 5, United States Code. The Director may be removed from office only for malfeasance of office or neglect of duty.

(c) ENVIRONMENTAL STATISTICS ANNUAL REPORT.—On January 1, 1992, and each January 1 thereafter, the Director shall submit to the President an Environmental Statistics Annual Report on the state and condition of the environment (hereafter referred to as the "Report"). The Report shall include, but not be limited to—

(1) data on environmental quality including—

(A) the major natural, man-made, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environmental, including,

but not limited to, the forest, dry-land, wetland, range, urban, suburban, and rural environment; and

(B) changes in the natural environment, including the plant and animal systems, and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(2) environmental quality data on human health and nonhuman species and ecosystems;

(3) documentation of the method used to obtain and assure the quality of the data presented in the Report;

(4) economic information on the current and projected costs and benefits of environmental protection; and

(5) recommendations on improving environmental statistical information.

(d) CONTINUING PERFORMANCE OF THE FUNCTIONS OF THE DIRECTOR PENDING CONFIRMATION.—An individual who, on the effective date of this Act, is performing any of the functions required by this section to be performed by the Director may continue to perform such functions until such functions are assigned to an individual appointed as the Director under this Act.

(e) ADVISORY COUNCIL ON ENVIRONMENTAL STATISTICS.—The Director shall appoint an Advisory Council on Environmental Statistics, comprised of no more than 6 private citizens who have expertise in environmental statistics and analysis, to advise the Director on environmental statistics and analyses, including whether the statistics and analyses disseminated by the Bureau are of high quality and are based upon the best available objective information. The Council shall be subject to the provisions of the Federal Advisory Committee Act.

(f) GRANT AND CONTRACT AUTHORITY.—The Secretary, acting through the Bureau for Environmental Statistics, shall make grants to and enter into contracts with State and local governments to assist them in meeting the costs of collecting specific data and other short-term activities that are related to the responsibilities and functions under subsection (a)(1) (A), (B), (C), and (D).

(g) BUREAU AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,800,000 in fiscal year 1991, $5,400,000 in fiscal year 1992, and such sums as necessary in each fiscal year thereafter to carry out the provisions of this section.

SEC. 209. MISCELLANEOUS EMPLOYMENT RESTRICTIONS.

(a) LIMITATION ON NUMBER OF NONCAREER SENIOR EXECUTIVES.—Notwithstanding section 3134(d) of title 5, United States Code, the number of Senior Executive Service positions in the Department which are filled by noncareer appointees in any fiscal year may not exceed 12 per cent of the total number of senior executives employed in Senior Executive Service positions in the Department at the end of the preceding fiscal year.

(b) PROHIBITED EMPLOYMENT AND ADVANCEMENT CONSIDERATIONS.—Except as otherwise provided in this Act, political affiliation or political qualification may not be taken into account in connection with the appointment of any person to any position in the career civil service or in the assignment or advancement of any career civil servant in the Department.

(c) REPORTS ON IMPLEMENTATION.—One year after the date of the enactment of this title and again 3 years after the date of the enactment of this title, the Secretary shall report to the Senate Committees on Governmental Affairs and Environment and Public Works and to the House of Representatives on the estimated additional cost of implementing this title over the cost as if this title had not been implemented, including a justification of increased staffing not required in the execution of this title.

SEC. 210. ADMINISTRATIVE PROVISIONS.

(a) ACCEPTANCE OF MONEY AND PROPERTY.—(1) The Secretary may accept and retain money, uncompensated services, and other real and personal property or rights (whether by gift, bequest, devise, or otherwise) for the purpose of carrying out the Department's programs and activities, except that the Secretary shall not endorse any company, product, organization, or service. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be credited in a separate fund in the Treasury of the United States and shall be available for disbursement upon the order of the Secretary.

(2) The Secretary shall prescribe regulations and guidelines setting forth the criteria the Department shall use in determining whether to accept a gift, bequest, or devise. Such criteria shall take into consideration whether the acceptance of the property would reflect unfavorably upon the Department's or any employee's ability to carry out its responsibilities or official duties in a fair and objective manner, or

would compromise the integrity of or the appearance of the integrity of a Government program or any official involved in that program.

(b) SEAL OF THE DEPARTMENT.—(1) On the effective date of this Act, the seal of the Environmental Protection Agency with appropriate changes shall be the seal of the Department of the Environment, until such time as the Secretary may cause a seal of office to be made for the Department of the Environment of such design as the Secretary shall approve.

(2) CRIMINAL PENALTY FOR UNAUTHORIZED USE OF SEAL.—(A) Chapter 33 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 716. Department of the Environment Seal

"(a) Whoever knowingly displays any printed or other likeness of the official seal of the Department of the Environment, or any facsimile thereof, in, or in connection with, any advertisement, poster, circular, book, pamphlet, or other publication, public meeting, play, motion picture, telecast, or other production, or on any building, monument, or stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States or by any department, agency, or instrumentality thereof, shall be fined not more than $250 or imprisoned not more than 6 months, or both.

"(b) Whoever, except as authorized under regulations promulgated by the Secretary of the Environment and published in the Federal Register, knowingly manufactures, reproduces, sells, or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the official seal of the Department of the Environment, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined not more than $250 or imprisoned not more than 6 months, or both.

"(c) A violation of subsection (a) or (b) may be enjoined at the suit of the Attorney General of the United States upon complaint by any authorized representative of the Secretary of the Department of the Environment.".

(B) The table of sections for chapter 33 of title 18, United States Code, is amended by adding at the end thereof:

"716. Department of the Environment Seal.".

(c) ACQUISITION OF COPYRIGHTS AND PATENTS.—The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

(d) ADVISORY COMMITTEE STANDARDS OF CONDUCT AND COMPENSATION.—The Secretary may promulgate regulations, no less stringent than any other applicable provision of law, regarding standards of conduct for members of advisory committees (and consultants to advisory committees), including requirements regarding conflicts of interest or disclosure of past and present financial and employment interests. The Secretary is authorized to pay members of advisory committees and others who perform services as authorized under section 3109 of title 5, United States Code, at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18 of the General Schedule.

SEC. 211. INHERENTLY GOVERNMENTAL FUNCTIONS.

(a) GOVERNMENT OFFICERS AND EMPLOYEES.—(1) Inherently governmental functions of the Department shall be performed only by officers and employees of the United States. For purposes of this section, "inherently governmental" means any activity which is so intimately related to the public interest as to mandate performance by Government officers and employees. These inherently governmental functions include those activities which require either the exercise of discretion in applying Government authority or the use of value of judgment in making decisions for the Government. These functions shall include, but not be limited to, work of a policy, decisionmaking, or managerial nature which is the direct responsibility of Department officials.

(b) PUBLIC NOTICE REGARDING POTENTIAL CONFLICTS OF INTEREST.—The Secretary shall promulgate regulations which require public notice to be given whenever the Secretary or his designee determines that the award of a contract, agreement, or other arrangement with a person for the provision of advisory and assistance serv-

ices which may result in a conflict of interest or give the appearance of a potential conflict of interest with respect to—

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons; or

(2) being given an unfair competitive advantage.

(c) DISCLAIMER.—Nothing in this section shall preclude the Department from promulgating regulations to monitor potential conflicts after the contract award.

(d) RULES.—No later than 30 days after the effective date of this Act, the Secretary shall publish rules for the implementation of this section.

(e) CENTRAL FILE.—The Department shall maintain a central file regarding all cases when a public notice is issued. Other information required under this section shall also be compiled. Access to this information shall be controlled to safeguard any proprietary information.

(f) DEFINITIONS.—For purposes of this section, the term "advisory and assistance services" includes—

(1) management and professional support services;

(2) the conduct of studies, analyses, and evaluations; and

(3) engineering and technical services, excluding routine technical services.

SEC. 212. REFERENCES.

Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining—

(1) to the Administrator of the Environmental Protection Agency shall be deemed to refer to the Secretary of the Environment;

(2) to the Environmental Protection Agency shall be deemed to refer to the Department of the Environment;

(3) to the Deputy Administrator of the Environmental Protection Agency shall be deemed to refer to the Deputy Secretary of the Environment; or

(4) to any Assistant Administrator of the Environmental Protection Agency shall be deemed to refer to an Assistant Secretary of the Department of the Environment.

SEC. 213. SAVINGS PROVISIONS.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, by the Administrator of the Environmental Protection Agency, or by a court of competent jurisdiction, in the performance of functions of the Administrator or the Environmental Protection Agency, and

(2) which are in effect at the time this Act takes effect, or were final before the effective date of this Act and are to become effective on or after the effective date of this Act,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of the Environment, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending before the Environmental Protection Agency at the time this Act takes effect, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(c) SUITS NOT AFFECTED.—The provisions of this Act shall not affect suits commenced before the date this Act takes effect, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Environmental Protection Agency, or by or against any individual in the official capacity of such individual as an officer of the Environmental Protection Agency, shall abate by reason of the enactment of this Act.

(e) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Environmental Protection Agency may be continued by the Department with the same effect as if this Act had not been enacted.

(f) PROPERTY AND RESOURCES.—The contracts, liabilities, records, property, and other assets and interests of the Environmental Protection Agency shall, after the effective date of this Act, be considered to be the contracts, liabilities, records, property, and other assets and interests of the Department.

(g) SAVINGS.—The Department of the Environment and its officers, employees, and agents shall have all the powers and authorities of the Environmental Protection Agency.

SEC. 214. CONFORMING AMENDMENTS.

(a) PRESIDENTIAL SUCCESSION.—Section 19(d)(1) of title 3, United States Code, is amended by inserting before the period at the end thereof the following: ", Secretary of the Environment".

(b) DEFINITION OF DEPARTMENT, CIVIL SERVICE LAWS.—Section 101 of title 5, United States Code, is amended by adding at the end thereof the following: "The Department of the Environment".

(c) COMPENSATION, LEVEL I.—Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following: "Secretary of the Environment".

(d) COMPENSATION, LEVEL II.—Section 5313 of title 5, United States Code, is amended by striking out "Administrator of Environmental Protection Agency" and inserting in lieu thereof "Deputy Secretary of the Environment".

(e) COMPENSATION, LEVEL IV.—Section 5315 of title 5, United States Code, is amended—

(1) by striking out "Inspector General, Environmental Protection Agency" and inserting in lieu thereof "Inspector General, Department of the Environment"; and

(2) by striking each reference to an Assistant Administrator of the Environmental Protection Agency and by adding at the end thereof the following: "Assistant Secretaries, Department of the Environment (10). "General Counsel, Department of the Environment.".

(f) COMPENSATION, LEVEL V.—Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"Director of the Bureau of Environment Statistics, Department of the Environment.

"Executive Director of the Interagency Committee on Global Climate.

"Executive Director of the Commission on Improving Environmental Protection.".

(g) INSPECTOR GENERAL ACT.—The Inspector General Act of 1978 is amended—

(1) in section 2(1)—

(A) by inserting "the Department of the Environment," after "Veterans Affairs,"; and

(B) by striking out "The Environmental Protection Agency,";

(2) in section 11(1) by striking out "or Veterans Affairs" and inserting "Veterans Affairs, or the Environment,"; and

(3) in section 11(2) by striking out "or Veterans Affairs" and inserting "Veterans Affairs, or the Environment,".

SEC. 215. ADDITIONAL CONFORMING AMENDMENTS.

After consultation with the Committee on Governmental Affairs and the Committee on Environment and Public Works of the United States Senate and the appropriate committees of the House of Representatives, the Secretary of the Environment shall prepare and submit to the Congress proposed legislation containing technical and conforming amendments to the United States Code, and to other provisions of law, to reflect the changes made by this Act. Such legislation shall be submitted not later than 6 months after the effective date of this Act.

TITLE III—ESTABLISHMENT OF THE INTERAGENCY COMMITTEE ON GLOBAL ENVIRONMENTAL CHANGE

SEC. 301. FINDINGS.

The Congress finds that—

(1) problems of global environmental change, including, but not limited to, changes in climate, depletion of the stratospheric ozone layer, loss of biodiversity and ecosystems (especially tropical rain forests), disposal of wastes, acidifi-

cation of the biosphere, and potential sea level rise must command the coordinated attention of the United States at both domestic and international levels;

(2) development of effective policies to mitigate and cope with human-induced global changes will rely on greatly improved scientific understanding of global environmental processes and on the ability to distinguish between the effects of human activities and the results of natural change;

(3) new developments in interdisciplinary earth sciences, global observing systems, and computing technology make possible significant advances in the scientific understanding and prediction of global changes and their effects;

(4) global environmental change scientific research is coordinated by, among others, the Committee on Earth Sciences of the Federal Coordinating Council on Science, Engineering, and Technology within the Office of Science and Technology Policy and the National Climate Program Office in the National Oceanic and Atmospheric Administration of the Department of Commerce;

(5) to maximize the benefit of this scientific research effort, there must be a parallel policy research effort to provide a basis for international and related domestic policy recommendations; these should evolve in accordance with future gains in scientific understanding of global environmental change;

(6) a coordinating, interagency Committee is required to oversee the design and implementation of Federal policy responses to problems of global environmental change; and

(7) a Committee with such responsibilities should be Cabinet-level and report directly to the President.

SEC. 302. ESTABLISHMENT.

(a) ESTABLISHMENT.—There is authorized to be established, within the Executive Office of the President, the Interagency Committee on Global Environmental Change (hereafter referred to as the "Committee") which shall be composed of—

(1) the Secretary of the Environment;
(2) the Secretary of State;
(3) the Secretary of the Treasury;
(4) the Attorney General of the United States;
(5) the Secretary of the Interior;
(6) the Secretary of Agriculture;
(7) the Secretary of Commerce;
(8) the Secretary of Health and Human Services;
(9) the Secretary of Transportation;
(10) the Secretary of Energy;
(11) the Director of the Office of Management and Budget;
(12) the Director of the National Science Foundation;
(13) the Administrator of the National Aeronautics and Space Administration;
(14) the Director of the White House Office of Science and Technology;
(15) the Chairman of the Council on Environmental Quality;
(16) the United States Trade Representative; and
(17) the Chairman of the President's Council of Economic Advisors.

(b) OTHER OFFICIALS AND CHAIRMAN.—The President may name to the Committee such other officers and officials as he determines advisable. The Secretary of the Environment shall serve as Chairman of the Committee.

(c) ADMINISTRATIVE PROVISIONS.—(1) The Committee shall appoint an Executive Director who shall be compensated at a rate not to exceed the rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code. With the approval of the Committee, the Executive Director may appoint and fix the compensation of not more than 10 additional technical staff members for the Committee.

(2) Upon the request of the Committee, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Committee to assist the Committee in carrying out its duties.

(3) The Office of Administration shall provide to the Committee such administrative and support service as the Committee may request.

SEC. 303. FUNCTIONS OF THE COMMITTEE.

(a) FUNCTIONS.—The Committee shall provide advice and assistance to the President in—

(1) coordinating the domestic and international programs, plans, and policies of all Federal agencies related to global environmental change, including—

(A) surveying the programs, plans, policies, and accomplishments of all Federal departments and agencies engaged in global environmental change activities; and

(B) ensuring cooperation among Federal departments and agencies with respect to their global environmental change activities;

(2) developing and transmitting to the Congress, no later than September 1 of each year, a policy plan which—

(A) covers the upcoming fiscal year;

(B) is parallel to and commensurate with the scientific research coordinated by, among others, the Committee on Earth Sciences and the National Climate Program Office; and

(C) ensures that Federal policy responses to global environmental change problems—

(i) are effectively coordinated among all Federal agencies, among all United States-supported bilateral and multilateral aid institutions (including, but not limited to, the United States Agency for International Development, the International Energy Agency, the World Bank, the International Monetary Fund, the United Nations, the African Development Bank, the Asian Development Bank, and the Inter-American Development Bank), and among other international organizations to which the United States belongs; and

(ii) are designed significantly to improve the global environment and to address the problems of global environmental change;

(D) may make recommendations for legislation as the President considers necessary or desirable for the attainment of the objectives identified by the Committee;

(3) develop and transmit to the Congress on September 1 every other year a report detailing the Committee's progress toward meeting the goals in the plan required by paragraph (2).

(b) CONSULTATIONS.—In carrying out this title, the Committee shall as they may find necessary and appropriate, consult with such other Federal interagency and advisory groups (including, but not limited to, the White House Economic Policy Council and the White House Domestic Policy Council) and non-Federal organizations as State governments, scientific and public policy research institutions, universities, and industry.

SEC. 304. RELATION TO OTHER LAWS.

The President and the Committee shall ensure that the activities carried out by the Department of the Environment and the Department of State under the Global Climate Protection Act of 1987 (15 U.S.C. 2901 note; Pub. Law 100-204, sections 1101-1106) are considered in the conduct and planning of a coordinated Federal global environmental program to address global climate change.

TITLE IV—ENVIRONMENTAL ROLE OF THE UNITED STATES IN INTERNATIONAL ORGANIZATIONS TO WHICH IT BELONGS

SEC. 401. FINDINGS.

The Congress finds that—

(1) the United States should continue to provide leadership in developing and implementing an international response to global environmental change;

(2) the most effective policies for addressing global environmental change will include issues of the generation and disposal of wastes, the generation of water and air pollution, marine pollution, energy generation and utilization, sustainable development, and land management; and

(3) dealing with these issues will require concerted international agreement and action.

SEC. 402. MULTILATERAL LENDING CONSIDERATIONS FOR ENERGY CONSERVATION AND ENVIRONMENTAL PROTECTION.

The Congress strongly urges the Secretary of the Treasury, with the advice of the Committee established under title III, to instruct the United States Executive Director of each of the multilateral development banks to consider and promote the energy conservation and environmental protection efforts of borrowing countries when voting to issue loans and other financial or technical assistance.

SEC. 403. INTERNATIONAL ENERGY CONFERENCE.

The Secretary of State, in consultation with the Secretary of Energy and the Secretary of the Environment, and with the advice of the Committee established in title III, is authorized and strongly urged to convene an international meeting to be

held in the United States with invitations to representatives of all countries of the world, the purpose of which shall be to encourage the exchange of information concerning energy efficiency and renewable energy resources that are environmentally acceptable and ecologically sustainable.

SEC. 404. MULTILATERAL GLOBAL CLIMATE PROTECTION CONVENTION.

(a) INTERNATIONAL MEETING.—The Secretary of State in consultation with the Secretary of the Environment and the United States science agencies (such as the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the National Science Foundation), and with the advice of the Committee established in title III, is authorized and strongly urged to convene an international meeting to be held in the United States with invitations to representatives of all countries of the world, the purpose of which shall be to encourage actively the adoption of a multilateral global climate protection convention.

(b) ADDITIONAL MEETINGS.—The Secretary of State, in consultation with the Secretary of Environment, is authorized and strongly urged to sponsor other meetings with the goal that the convention is opened for signature no later than the end of 1993.

SEC. 405. INTERNATIONAL GREENHOUSE GAS MONITORING PROGRAM.

The President, with the advice of the Committee established in title III, shall encourage the establishment of an office of the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) to monitor annual estimated generation and removal of carbon dioxide and other trace gases on a country-by-country basis. That office shall also be responsible for assisting global negotiations and ultimately administering a global protocol.

SEC. 406. RELATION TO OTHER LAWS.

The activities authorized under this title are to be carried out in a manner consistent with the duties assigned the Department of Environment and the Department of State under the Global Climate Protection Act of 1987 (15 U.S.C. 2901 note; Pub. Law 100-204, sections 1101-1106).

TITLE V—ESTABLISHMENT OF THE COMMISSION ON IMPROVING ENVIRONMENTAL PROTECTION

SEC. 501. FINDINGS.

The Congress finds that—

(1) Federal environmental programs have different approaches to regulating pollutants and addressing problems of cross-media and residuals management; and

(2) there are numerous Federal agencies, offices, and bureaus charged with environmental protection responsibilities.

SEC. 502. ESTABLISHMENT; MEMBERSHIP.

(a) ESTABLISHMENT.—There is established the Commission on Improving Environmental Protection (hereafter referred to as "the Commission") whose 13 members including the Chairman shall be composed of experts in governmental organization (with emphasis on environmental organization), management of organizations and environmental regulation and improved environmental governmental service delivery, consisting of—

(1) seven members to be appointed by the President;

(2) three members to be appointed by the Speaker of the House; and

(3) three members to be appointed by the Senate Majority Leader.

(b) CHAIRMAN.—The Chairman of the Commission shall be appointed by the President in consultation with the Congress.

(c) EX OFFICIO MEMBER.—The Secretary of the Department of the Environment (hereafter referred to as "the Department") shall be a non-voting ex officio member of the Commission.

SEC. 503. COMMISSION RESPONSIBILITIES.

The Commission shall be responsible for examining and making recommendations on integrating Federal environmental law and other authorities to improve the ability of the United States to protect the environment. The Commission shall make recommendations and otherwise advise the President and Congress on—

(1) the need for comprehensive pollution control administrative and legislative reforms that would improve and strengthen the management of Federal environmental protection;

(2) new or modified institutional arrangements, processes, or regulations that would improve the integration and delivery of Federal environmental protection, research, and planning programs; and

(3) specific steps and proposals for implementing the Commission's recommendations.

SEC. 504. REPORT TO THE PRESIDENT AND CONGRESS.

The Commission shall report to the President and the Congress on its investigation, findings, and recommendations in an interim report no later than 12 months after the effective date of this title, and in a final report no later than 24 months after the effective date of this title. The interim report shall be made available for public review and comment, and the comments taken into account in finalizing the report.

SEC. 505. COMMISSION STAFF.

The Commission shall appoint an Executive Director who shall be compensated at a rate not to exceed the rate of basic pay prescribed for level V of the Executive Schedule under section 5316 title 5, United States Code. With the approval of the Commission the Executive Director may appoint and fix the compensation of staff sufficient to enable the Commission to carry out its duties.

SEC. 506. ADVISORY GROUPS.

The Chairman shall convene at least one advisory group to assist the Commission in developing its recommendations. One advisory group shall be composed of past staff of the Department of the Environment and its predecessor Environmental Protection Agency, other Federal and State officials experienced in administering environmental protection programs, members of the regulated community and members of public interest groups organized to further the goals of environmental protection. The Executive Director is authorized to pay members of advisory committees and others who perform services as authorized under section 3109 of title 5, United States Code, at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18 of the General Schedule. The advisory group shall be subject to the provisions of the Federal Advisory Committee Act.

SEC. 507. FUNDING; AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $3,000,000 in fiscal year 1991 and $5,000,000 in fiscal year 1992 to carry out the provisions of this title.

TITLE VI—EFFECTIVE DATE

SEC. 601. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on such date during the 6-month period beginning on the date of enactment, as the President may direct in an Executive order. If the President fails to issue an Executive order for the purpose of this section, this Act and such amendments shall take effect 6 months after the date of the enactment of this Act.

I. PURPOSE

The purpose of S. 2006 is to establish the Environmental Protection Agency (EPA) as a cabinet-level Department of the Environment and strengthen the agency's management effectiveness and ability to execute national and international environmental policy. The bill also establishes within the Department a Bureau of Environmental Statistics. A Commission on Improving Environmental Protection, which will examine and make recommendations to better integrate Federal environmental laws, regulations and other authorities is also created by S. 2006.

The legislation incorporates several other initiatives, primarily in the international environmental arena, including:

—establishing an Interagency Committee on Global Environmental Change

—urging the Secretary of the Treasury to instruct the U.S. Executive Directors of the multilateral development banks to con-

sider and promote energy conservation and environmental protection efforts of borrowing countries when issuing loans and and other financial or technical assistance
—authorizing the Secretary of State to convene in the United States an international meeting on energy efficiency and renewable energy resources
—urging that the United States take the lead in concluding a multilateral convention on global climate protection
—encouraging the establishment of an international carbon dioxide monitoring program under the auspices of the United Nations Environment Program (UNEP) and the World Meteorological Organization (WMO).

II. Background

Concern about the environment and the impact of human activities on it has existed for decades. Although considerable activity at the state level made environmental issues varyingly important through the fifties and sixties, such concern was not considered to be a requirement of integrated Federal policy until the late sixties and early seventies (with the advent of an active environmental movement, perhaps best reflected in the holding of Earth Day, 1970). That same year, then President Nixon, acting under reorganization authority provided by the Congress, proposed the creation of an environmental agency within the Federal government (see Appendix A: Reorganization Plan No. 3). Considerable debate ensured over the scope and direction of our domestic and international environmental policy.

What sort of role should a Federal agency play in making and enforcing environmental standards? What kind of regulatory agency should it be? Should it be a cabinet-level agency? An independent agency?

The outcome of that debate was the establishment of the Environmental Protection Agency as a primarily enforcement-driven organization with responsibility for overseeing the regulation of a handful of water and air pollutants and the registration of pesticides. In addition, the Council on Environmental Quality (CEQ) was created to play a key policy role in the environmental area.

Today, the scope of EPA's activities has greatly expanded. In the past, it oversaw 4 major environmental statutes. Now, its activity includes over 15 major statutes, and many minor ones (see chart A). (EPA's role under these statutes is primarily regulatory in nature and does not involve habitat protection.) To match its increasing responsibilities, EPA has been given greater appropriations and personnel. Since its creation, the agency's total budget has increased ten-fold (from $384 million in 1970 to about $5 billion in 1989) and its staff has nearly tripled (from 5700 in 1970 to over 15,000 today). In June, the General Accounting Office estimated that the economic effect (i.e. all of the costs associated with pollution control and regulation, including cleanup, compliance, research and development, etc.) of EPA programs was more than $700 billion since 1970 and $86 billion annually (about 2 percent of our GNP).

Despite the general growth of the agency, over the course of the Reagan Administration political support and funding for EPA programs steadily eroded. In real dollars there has been a 12-percent *decrease* in EPA's budget since 1981 (not even considering EPA's significant and relatively new responsibilities in Superfund and the Resource Conservation and Recovery Act). The number of employees in research and development, important for the credibility of environmental policy, has fallen from abut 2300 to about 1800, with a parallel increase in reliance upon contractors and consultants.

Most recently, attention has been focused on environmental problems at the global level. Stratospheric ozone depletion, global warming, acid rain, and a number of other major international environmental concerns have occupied a steadily increasing amount of time and resources to EPA. At the same time, new revelations at home about environmental degradation at Federal facilities and the ongoing debate over clean air have given new impetus to calls for increased attention to environmental problems. Those calls have resulted in substantial political support for the elevation of EPA to cabinet-level status.

In June, 1989, Senator John Glenn, Chairman of the Governmental Affairs Committee, met with President Bush to discuss a proposal to make the EPA a cabinet department. Over the next six months, negotiations involving the Chairman, the ranking Minority member Senator William Roth and the Administration ensued. Finally, on January 23, 1990, S. 2006 was introduced, with the full support of President Bush and the backing of 5 cosponsors (the bill is currently cosponsored by 33 Senators).

The bill as introduced was the outcome of a bargaining process which produced various compromises on all sides. As such, its amendation was approached by the Committee with especially great concern and care. During markup, only five amendments were offered and four were passed. The many suggestions received in hearings and otherwise to make changes must be put in this context. The Committee has given serious consideration to each of these proposed modifications, and has done so fully aware of the need to maintain the original balance.

Chart A: Major Environmental Laws Administered by the Environmental Protection Agency (as of October, 1989) source: Congressional Research Service.

STATUTE[1]
Clean Air Act.
Clean Water Act.
Ocean Dumping Act.
Safe Drinking Water Act.
Resource Conservation and Recovery Act.
Superfund.
SARA.
Federal Insecticide, Fungicide and Rodenticide Act.
Toxic Substances Control Act.

[1] Although some of these authorizations have expired, certain of the programs have continued and have been funded.

Environmental Research and Development.
National Environmental Policy Act.
Noise Control Act.
Marine Protection Research and Sanctuaries Act.
Global Climate Protection Act.
Uranium Mill Tailings Radiation.
Control Act.
Asbestos School Hazard Abatement Act.
Federal Food, Drug and Cosmetic Act.

III. Legisalative History

On February 6, 7, and 8 the Committee held hearings on the bill. The hearings included the following witnessess:

February 6—

The Honorable Frank R. Lautenberg, United States Senator (D-NJ).

The Honorable Dave Durenberger, United States Senator (R-MN).

The Honorable Jim Saxton, United States Representative (R-NJ).

The Honorable William K. Reilly, Administrator, Environmental Protection Agency.

F. Henry Habicht II; Deputy Administrator, Environmental Protection Agency.

Ambassador Peter Jon de Vos, Principal Deputy Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

Stephen A. Wakefield, General Counsel, Department of Energy.

John Niehuss, Senior Deputy Assistant Secretary, for International Economic Policy, Department of Treasury.

February 7—

Douglas Costle, Dean, Vermont Law School, Former Administrator, Environmental Protection Agency.

Ray Kline, President, National Academy of Public Administration.

Richard Wegman, Attorney at Law, Wegman and Hoff and Howard Messner, National Academy of Public Administration.

Sharon Newsome, Vice President for Resource Conservation, National Wildlife Federation.

Thomas B. Stoel, Jr., Director of International Programs, Natural Resources Defense Council.

Federick Krupp, Environmental Defense Fund.

Michael McCloskey, Sierra Club.

Michael S. Clark, Friends of the Earth.

Nolan Hancock, Oil, Chemical, and Atomic Workers Union.

February 8—

Gus Speth, President, World Resources Institute.

Dr. Paul Portney, Vice President, Resources for the Future.

J. Dexter Peach, Assistant Comptroller General, General Accounting Office.

Dr. Bruce Karrh, Vice President for Safety, Health and Environmental Affairs, E.I. DuPont de Nemours and Company.

Ron Van Mynen, Vice President for Health, Safety and Environment, Union Carbide Chemicals and Plastics Company, Inc.

Daniel K. Shipp, Vice President, Public Affairs, National Electrical Manufacturers Association.

COMMITEE MARK-UP OF S. 2006

(i) On February 28, the Committee marked up S. 2006, and favorably reported it by a vote of 10 ayes and 1 abstention. The vote tally follows:

Nunn	Aye
Levin	Aye
Sasser	Aye
Pryor	Abstain
Bingaman	Aye
Kohl	Aye
Lieberman	Aye
Roth	Aye
Stevens	Aye
Cohen	Not voting
Rudman	Aye
Heinz	Not voting
Wilson	Not voting
Glenn	Aye

(ii) An amendment was offered by Senator Lieberman regarding the importance of long-term research. It passed by voice vote.

(iii) Another amendment offered by Senator Lieberman to require that the Secretary of the Environment be named Chairman of the Interagency Committee on Global Environmental Change passed. The vote tally follows:

Nunn	Aye
Levin	Aye
Sasser	Aye
Pryor	Aye
Bingaman	Aye
Kohl	Aye
Lieberman	Aye
Roth	No
Stevens	No
Cohen	No
Rudman	No
Heinz	No
Wilson	Not voting
Glenn	No

(iv) Senator Stevens offered an amendment to make the official acronym of the new Department U.S.D.E. The amendment passed by voice vote.

(v) Senator Bingaman offered an amendment regarding the Bureau of Environmental Statistics. The amendment failed on a vote of 6 ayes and 6 nos. The vote tally follows:

Nunn	Aye
Levin	Aye
Sasser	Not voting
Pryor	Aye
Bingaman	Aye
Kohl	Aye
Lieberman	Aye
Roth	No
Stevens	No
Cohen	No
Rudman	No
Heinz	No
Wilson	Not voting
Glenn	No

(vi) Senator Pryor offered an amendment on inherently governmental functions and their performance by government employees, and on the requirement for public notice of conflicts of interest. His amendment passed by voice vote.

IV. The Case for a Department of the Environment

The Committee if fully aware of and take seriously concerns expressed by students of government about the growth and consequent unwieldiness of the Presidential Cabinet. The Committee believes, however, that these concerns are overridden by the benefits that will accrue from establishing a Department of the Environment. The witnesses at our hearings agreed to several key reasons why the new department is both desirable and important:

A. Presidential access and attention.—The history of Presidential attitudes toward environmental problems (ranging from great indifference to great concern) suggests that, independent of the stance of any particular President, there needs to be an institutional permanence at the highest level in the making and executing of environmental policy. Environmental policy matters frequently cut across the concerns and jurisdictions of cabinet-level departments and vice versa. A seat at the cabinet table for the Secretary of the Environment assures a level playing field for interagency discussions and routine, predictable access to the President.

The question of Presidential access was a feature of testimony at the hearings before the Committee. In some past Administrations, the administrator of EPA has been relegated to second-class status in the eyes of the President. Mr. William K. Reilly, current Administrator of EPA, argues that Mr. Bush himself has taken a more interested environmental role and that, as a result, the EPA Administrator has greater access. However, nothing about the Administrator's position per se has been altered in the past 20 years to expect him to suddenly gain new access and attention on his own. Chairman Glenn noted, and several witnesses opined, that we

cannot leave the access question open to the winds of political change. As Chairman Glenn put it:

> * * * we must make the EPA's access to the President and organizational clout permanent, not subject to the whims of political leaders or changes in the leadership itself, from one administration to another.

The quesiton of access also bears directly upon the amount of attention we may be able to expect the President to give to environmental matters. As Sharon Newsome from National Wildlife Federation testified:

> Presidential involvement in environmental issues would have other important benefits as well. Close counsel of the President on environmental issues could result in strong support for environmental measures in Congress. Presidential involvement would help guarantee that legislation which if adopted is implemented as it was intended. And greater Presidential involvement could ensure that adequate resources are allocated for the commitments made to the citizens of the United States by their representatives in Congress.

Even Administrator Reilly admited that, notwithstanding President Bush's support, some sense of permanence should be established:

> The chair of an invitee is removable, and a guest—particularly one charged with the range of controversial issues before EPA—can risk overstaying his or her welcome.

B. Policy integration and coordination.—As indicated above, many environmental protection programs require significant interaction with other federal departments and agencies. Clean air and clean water programs involve, among others, EPA, the Department of Transportation, the Department of Agriculture, the Department of the Interior, and many research agencies. The Committee on Governmental Affairs' activities in overseeing and investigating the cleanup of the Department of Energy's weapons production complex have revealed the considerable interface in regulation and policy between EPA and the DOE. International effects of environmental policy may involve the Departments of State, Commerce, perhaps even the U.S. Trade Representative, as well as EPA. From the standpoint of efficiency and economy, these interactions suggest the virtue and wisdom of putting EPA on the same footing as other cabinet-level federal agencies.

Our hearings yielded consensus on the importance of EPA's participation in debates and discussions with other agencies on the formulation, funding, and execution of environmental policy. As Administrator Reilly concluded:

> Joining the Cabinet is a concrete step in integrating environmental issues across Departmental lines. It is essential that an agency whose priority is the environment be in a position, as an equal, to cooperate with the Cabinet Departments that oversee the nation's economic, military, and general well-being. S. 2006 institutionalizes the environment's "place at the table", elbow to elbow with those affected by environmental laws, policies, and programs, and, in turn, whose actions inevitably touch our activities and responsibilities at EPA.

Dexter Peach, GAO's witness on February 8, added another, more compelling note about the importance of such integration:

> * * * as demonstrated by numerous GAO reviews, other federal agencies do not always provide the support and cooperation necessary to further environmental policy goals. Instead, roadblocks are often created by jurisdictional conflicts, organizational structures, and cultures that are not conducive to coooperation with EPA or that place a low priority on environmental protection.

C. International structure.—The increasingly global nature of environmental pollution problems and the consequent need for international negotiations on policies for mitigation require the presence and participation of U.S. Government personnel who are on par with their foreign counterparts. "I can personally attest to the fact that, in dealing with representatives of foreign States, rank and status are important," said Russell Train, former EPA Administrator, at hearings on H.R. 3847 (Rep. Conyers' bill) in June, 1989.

Numerous witnesses at our hearings described the need to provide new stature for our environmental efforts abroad. The United States is a world leader in a number of environmental areas, yet it continues to present itself to the world with sub-ministerial level officials for high-level negotiations and delicate political discussions (see chart B):

Chart A—Executive Status of Selected Environmental Ministries

Cabinet Status:	Non-Cabinet Status:
Australia	United States
Austria	
Belgium	

Cabinet Status:

Canada
Denmark
Federal Republic of Germany
France (Minister without portfolio)
India
Ireland
Italy
Japan
Luxembourg
Mexico
Netherlands
New Zealand
Norway
Poland
Sweden
Taiwan
United Kingdom
USSR

Mr. Reilly, who President Bush has said would be his choice as the first Secretary of the Environment, noted at our February 6 hearing:

> The perception that the United States Environmental Protection Agency is not headed by a cabinet officer I think strikes many other governments as odd and anomalous and difficult to understand, particularly now as we have these interactions on such fundamental, important issues.

Other witnesses also remarked upon the growing scope of America's involvement in international environmental questions. Ambassador Peter Jon de Vos, Principal Deputy Assistant Secretary at the Bureau of Oceans and International Environmental and Scientific Affairs in the State Department at our February 6 hearing cited some specific examples of that involvement:

> The process leading both to the Vienna Convention and Montreal Protocol on ozone depletion was but one example of an environmental initiative attributable to U.S. leadership. More recently, we strongly supported the establishment of the Intergovernmental Panel on Climate Change (IPCC) to serve as the primary forum for considering all aspects of this vital issue.

Thomas Stoel, Jr. of the Natural Resources Defense Council echoed this view:

> Lack of Cabinet status for EPA is even more harmful with respect to international problems. Many foreign countries have Cabinet-level environmental ministries * * * These countries created cabinet-level agencies to demonstrate that they attach great importance to environmental protection. For the United States not to have such an

> agency is bound to send the opposite message, no matter what we say to the contrary.

Industry representatives also noted the desirability of enhancing our international image in the environmental area. Dr. Bruce Karrh of DuPont concluded:

> In international relationships and negotiations, where position and protocol may be especially important, having cabinet department status should prove very useful, especially because the secretary will be dealing with his peers from other countries on an equal footing.

Industry witnesses also suggested that cabinet status will confer on EPA a stronger ability to integrate environmental objectives with economic ones. The concern is for a check to ensure that domestic environmental laws and regulations do not unnecessarily hamper U.S. industrial competitiveness abroad. Mr. Ron Van Mynen, of the Chemical Manufacturers Association testified that he believes a new Department of the Environment:

> should also have the ability to assess the effects of regulation and legislation on the international competitiveness of U.S. industry. And it should * * * seek to integrate environmental and economic decision-making.

CONCLUSION

The Committee heard compelling testimony on all three points related to the need for EPA elevation. The Committee is in agreement about the relevance and importance of the stated benefits of elevation.

V. New Cabinet Departments and the NAPA Criteria

Two years ago, in considering a proposal to elevate the Veterans Administration, the Committee found that there were no criteria in place to measure the value and ultimate wisdom of creating new Cabinet-level departments. It subsequently asked the National Academy of Public Administration (NAPA) to develop such criteria, which were grouped into several categories. The Committee returned to NAPA for its evaluation of the EPA elevation with respect to these 14 criteria, and heard testimony from Mr. Ray Kline, head of NAPA, about the criteria's applicability in this case. The Committee also heard testimony from the General Accounting Office and the National Wildlife Federation (NWF) about the relevance of the NAPA critieria, and received a review of their applicability from the Congressional Research Service (CRS). Following is a review of these analyses.

THE NAPA CRITERIA FOR EPA ELEVATION

The NAPA criteria were slightly reworded in places to accomodate differences between the VA case and the EPA case. They are expressed as 14 factors, in four general categories:

A. Establishing a National Priority for the Agency's Programs.

1. Does the Agency or set of programs serve a broad national goal or purpose not exclusively identified with a single class, occupation, discipline, region, or sector of society?

On this point, NAPA, GAO, NWF and CRS all agreed that EPA does serve a broad national goal.

2. Is there evidence that there is a significant need that is not now adequately recognized or addressed by the Agency in question, the President, or the Congress which would be better assessed or met by elevating the agency to a cabinet department?

NAPA concluded on this point that more must be done locally and nationally on environmental matters and that elevating EPA will help. NWF noted that the environment has been underrepresented during the formulation of national policies and that elevation would make a key difference in that situation. They also believe that elevation would help with compliance with environmental regulations by other federal agencies and that national security aspects of environmental issues would be much better addressed by a Department of the Environment. GAO and CRS focused on the ability of the agency to obtain more resources to carry out its mission. They concluded that elevation is not likely to change outlays—a point with which at least one of our witnesses might take issue. Senator Lautenberg observed:

> During the last Administration we saw case after case of OMB running rampant over EPA. OMB proposed cuts for the sewage treatment program. * * * It refused to let EPA play a role in the clean air debate, and EPA regulations were routinely delayed or reversed. OMB is a heavy weight fighter, and we need to give the Administrator the ability to get into the same ring with OMB without constantly being knocked out. Making EPA a cabinet-level department would give it increased clout in obtaining necessary funding. * * *

3. Is there evidence of impending changes in needs or circumstances which would be better addressed if the Agency were made a cabinet department? Are such changes expected to continue in the future?

NAPA, NWF, GAO and CRS all agreed on this point. Environmental problems are becoming more and more complex and will likely continue to grow in scope and character across the globe. A Department of the Environment would be an appropriate forum in which to address these issues.

4. Would a cabinet department increase the "visibility" and thereby substantially strengthen the active political and public support for programs for which the Agency is responsible?

There was general agreement among the witnesses that the EPA elevation meets this criterion. CRS noted that the most significant effect of elevation in this case might be the underscoring of the emergence of environmental protection as a national priority. NAPA asserted that program visibility would definitely be aided by the elevation, despite the fact that the EPA already occupies a rather high level of public visibility. GAO believes that current

support and visibility are high and that elevation can only enhance such support, particularly in the political realm.

5. Is there evidence that becoming a cabinet department would provide better analysis, expression and advocacy of the needs and programs which constitute the agency's responsibilities?

Again there was consensus that the advocacy of EPA's programs, as well as program coordination and integration would be well-served by elevation. Concern was expressed by GAO and NWF that Presidential attention is a key factor in the ability of even cabinet secretaries to articulate and push for programs. Although Mr. Reilly indicated general satisfaction with the level of support he has received from President Bush, he also commented on the value of being a Cabinet official in an interagency setting:

> The cabinet departments, including Agriculture, Commerce, Energy, Health and Human Services, Interior, Justice, State, Transportation, and Treasury have their missions. In pursuit of their missions, these Departments often undertake actions that profoundly affect the environment. Working within the Cabinet as a full partner would help ensure full consideration of environmental factors to ensure sensible, responsible, well-informed policies government-wide.

The Committee believes that all the criteria associated with establishing a national priority for the agency's programs are met by EPA.

B. Improving Program Effectiveness

6. Is there evidence that elevation to a cabinet department would improve the effectiveness of service delivery to the beneficiaries served by the Agency?

Strictly speaking, this criterion does not apply, since the EPA does not provide services per se. However, if one were to interpret "service delivery to the beneficiaries" as meaning delivering a cleaner, more healthful environment for the American people, there was ample testimony that elevation of EPA to cabinet level status would improve its ability to carry out its mission.

7. Is a cabinet department required to better coordinate or consolidate programs and functions that are now scattered throughout other agencies in the Executive Branch of government?

Although S. 2006 does not call for a major reorganization of EPA's and related agency programs and structure, the Committee believes that evaluation of EPA mandates a government-wide review of environmental programs, functions and organizations for the purpose of achieving appropriate economies and efficiencies in improving environmental protection. Title V of S. 2006 offers a mechanism for accomplishing this review.

8. Is there evidence that a cabinet department with its increase in the centralized political authority of the Secretary's office would result in a more effective balance, within the agency, between integrated central strategic planning and resource allocation, and the direct participation in management decisions by the line officers who are responsible for directing and managing service delivery? Would the staff officer-line officer interaction be improved?

NAPA testified that internal program integration may be helped by the inclusion of clearly delineated positions and entities within the new Department (e.g. a Chief Financial Officer and a Bureau of Environmental Statistics). NWF also stated that elevation would promote integrated strategic planning. GAO asserted that this criterion, as well as the one following regarding structural and management weaknesses can and must be met by either an agency or a department, and that elevation is irrelevant to the outcome. The Committee agrees with GAO on this point.

9. Is there evidence of significant structural, management or operational weaknesses within the agency that could be more easily corrected by elevation to a cabinet department?

On this point NAPA indicated that it believes the bill provides the flexibility required to address weaknesses by giving the Secretary up to 10 assistant Secretary appointments and the opportunity to decide what responsibilities each should have. NWF asserted that such a reorganization as might be undertaken by a new Secretary of the Environmental could move EPA towards a multimedia approach to environmental hazards, which it currently lacks.

10. Is there evidence that there are external barriers and impediments to timely decison making and executive action that could be detrimental to improving the efficiency of agency programs? And would these impediments be improved or mitigated by elevation to a cabinet department?

NAPA, NWF, GAO and CRS all tended to concur that this criterion is best applied in the case of OMB control and involvement in policy implementation. They reached no definitive conclusion as to whether elevation to cabinet-level status would make much difference.

11. Would elevation to a cabinet department help recruit and retain better qualified leadership within the agency?

The Committee agrees with the witnesses that this criterion is met by EPA. The NAPA analysis stated:

> The new presidential appointments established by S. 2006 might help in attracting skilled leadership.
>
> Our VA panel report said "* * * a Cabinet secretary position is customarily more attractive to senior executive talent with a broader base of experience. Since more prestige is attached to presidential appointments, this may also be true for the * * * sub-cabinet line officers who have the day-to-day operational management responsibilities."

GAO concurred: In 1987, we noted that one-third of the Superfund program staff we surveyed planned to look for other jobs the following year. To the extent that staff turnover is a function of a perceived lack of commitment to the agency—as may have been the case in the early 1980s—then elevation to EPA to Cabinet status may be an important signal that staff efforts are important and valued.

C. Improving Federal Policy Integration

12. Is there evidence that a cabinet department would facilitate more uniform achievement of broad, cross-cutting national goals

such as: better integration of research; national assistance and information programs; equitable decisionmaking criteria; government-wide personnel and budgetary controls; more efficient management and disposition of federal real property assets; and the comprehensive coordination of strategies?

NAPA believes that, because the elevation does not affect the statutory responsibilities of other departments or agencies, it would not meet this criterion. However, many witnesses before the Committee agreed that EPA needs equal footing with other cabinet-level agencies to integrate policy more effectively and thereby increase the likelihood of more uniform achievement of cross-cutting national goals. This is true, as cited before, of the Departments of Energy, Defense, Interior, Agriculture, and others. As CRS observed:

> As environmental issues become more far reaching, successful solutions increasingly depend on the active participation of other Federal departments.

Mr. Reilly, Mr. Costle, GAO, and numerous others have suggested that a Department of the Environment would be in a much better position to effect cooperation and coordination among the various federal agencies. The Committee concurs strongly in this conclusion.

13. Would elevation to a cabinet department weaken or strengthen the Cabinet and the Executive Office of the President as policy and management aids to the President?

NAPA believes that although there is a need to be sensitive to the possibility that the cabinet can become too large and unwieldy, the policy benefits in the case of EPA far outweigh such concerns. That view was echoed by other witnesses, including William Reilly and the National Wildlife Federation. The Committee concurs.

D. Improving Accountability to Elected Public Officials

14. Would the elevation to a cabinet department have a beneficial or detrimental effect on the oversight and accountability of the agency to the President and the Congress?

NAPA points to the congressional oversight of EPA by 34 Senate and 56 House Committees to buttress its claim that accountability to Congress would not change drastically in a new department. This view is shared by CRS, GAO and the Committee.

CONCLUSION

The Committee concludes that at least nine of the fourteen NAPA criteria for elevation are met by EPA, and that elevation is justified on this basis alone.

VI. Section-by-Section Analysis of and Amendments to S. 2006

The Committee was guided in this case by a number of general criteria: (1) whenever possible, the legislation should provide leadership flexibility to the new Secretary; (2) the Department should have a proper mix of presidential, noncareer, and career leadership; (3) the Department should have a clear line of authority between the Secretary, the operating units, and the various staff of-

fices, including the Inspector General, General Counsel, and Assistant Secretaries; and (4) the Department should have the strongest internal control and management information systems possible. Below is a section by section analysis of S. 2006 which includes a discussion, where appropriate, of Committee actions and intentions, bearing in mind these four criteria.

Section 1. Short title and table of contents

This section identifies the short title as the "Department of the Environment Act of 1990" and lists the contents of the bill.

TITLE I—GENERAL FINDINGS

This title lists congressional findings on the alteration of the Earth's environment, its serious implications, the need for coordinated Federal energy, natural resources, and environmental policies, and the necessity of adopting a high-level, coordinated Federal policy which addresses the environment on a national and international level. The language emphasizes the importance of long-term research on pollution prevention issues. This emphasis is the result of an amendment by Senator Lieberman which passed during the markup of S. 2006.

TITLE II—ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY TO CABINET LEVEL

Section 201. Short Title

This section cites title II as the "Department of the Environment Act."

Section 202. Findings

This section declares the necessity of giving environmental protection a priority at least as high as other Federal functions; because international negotiations are increasingly involved and because environmental protection funding and staff levels are commensurate with departmental status. The section also states that a cabinet-level Department of the Environment with primary responsibility for national environmental matters should be established.

Section 203. Establishment of the Department of the Environment

This section redesignates the Environmental Protection Agency as the Department of the Environment and requires that the official acronym of the Department be "U.S.D.E." Senator Stevens proposed this acronym and his amendment designating it was adopted by voice vote of the Committee during the markup of S. 2006. The Committee's acceptance of the amendment reflects its concern with the proliferation of "DOEs" in the Executive Branch (Department of Energy, Department of Education). Section 203 also establishes a Secretary of the Environment, appointed by the President, by and with the consent of the Senate, to administer the Department. It prohibits the Secretary from assigning or delegating authority for supervising Assistant Secretaries, the General Counsel, the Director of Environmental Statistics, or the Inspector General of the Department to any officer of the Department other than the Deputy Secretary. The Secretary may delegate other functions, including

the making of regulations, to other officers and Department employees. This section also authorizes a Deputy Secretary of the Environment, appointed by the President, by and with the advice and consent of the Senate. The redelegation authority provided in this section is necessary to give the Secretary flexibility in carrying out his duties. However, it should be noted that that authority is given in the context of the bill's other requirements in this area, including requirements tht the President specify each Assistant Secretary's duties upon nomination and that the Secretary give "substantial, prior, written notification" before modifying any of the duties carried out by an Assistant Secretary.

Section 203 also establishes an Office of the Secretary consisting of a Secretary, Deputy Secretary, and possibly an Executive Secretary. The Committee gives the Secretary the option of establishing an Executive Secretary to allow the Secretary flexibility in filling supervisory and nonsupervisory positions within the Office of the Secretary. Of particular concern was the lack of duties normally assigned to current EPA Associate Administrators involving coordination and contact with the various EPA Regions. The Committee does not intend that the Secretary use this authority to expand unnecessarily the size of or add another layer to the structure of the Department as provided in this legislation.

Section 203 also authorizes the Secretary to maintain or alter regional and field offices as necessary. This section also encourages the Secretary of the Department to assist the Secretary of State in negotiating and imlementing international environmental agreements, and authorizes the Secretary of the Department to conduct research on international environmental problems and provide technical and other assistance to foreign countries and international organizations. The Secretary of State is directed to consult with the Secretary of the Environment on participation in international environmental protection efforts and negotiation of international environmental agreements. The legislation provides the new Department authority to extend to foreign nations technical and financial assistance for environmental protection.

According to EPA, its authority to provide assistance, particularly in emergency situations, is limited and often media-specific (examples where new authority could be useful include the Montreal Protocol on Ozone-Depleting Substances, the Moroccan oil spill response, Mexico City air pollution, new projects arising in Eastern Europe, etc.) The Committee also provided that the Secretary of the Environment should be closely consulted by the Secretary of State with respect to the Secretary of State's international environmental activities. This is particularly important in the realm of international agreement or treaty negotiations. The Committee expects that the Secretary of USDE would be consulted at every stage of such negotiations.

Section 204. Assistant secretaries

This section authorizes as many as ten Assistant Secretaries, appointed by the President, and performing responsibilities prescribed by the Secretary. These responsibilities include, but are not limited to: enforcement and compliance monitoring; research and development; air and radiation; water; pesticides and toxic sub-

stances; solid waste; hazardous waste; hazardous waste cleanup; emergency response; pollution prevention; international affairs; policy, planning and evaluation; congressional, intergovernmental and public affairs; and administration and resource management, including financial and budget management, information resources management, procurement and assistance management, and personnel and labor relations.

Section 204 also requires that the Secretary notify appropriate Senate and House committees when modifying the responsibilities of Assistant Secretaries. It requires that, when nominating, the President state the particular responsibilities an Assistant Secretary will exercise. The Committee provided that the Administrator, the Deputy Administrator, Assistant Administrators, the General Counsel and the Inspector General will become the new Secretary, Deputy Secretary, Assistant Secretaries, General Counsel and Inspector General, respectively, of the new Department without renomination or reconfirmation. However, new Presidential appointees, for positions requiring Senate confirmation, must undergo all of the same nomination and confirmation proceedings currently required.

The bill includes language which requires that, before the Secretary makes any modification to the duties of Assistant Secretaries, he/she must provide "substantial, prior, written notification" of such modification to the "appropriate committees of the Senate and House of Representatives." The Committee strongly emphasizes with this language that there should be flexibility both for the current Administrator and the new Secretary, but that the discretion to modify functions not be undertaken without an opportunity for congressional review. The Committee recommends that the current Administrator plan for establishing Assistant Secretaries under a new Department in advance of the effective date of this act and communicate such plan to the appropriate committees (including Senate Environment and Public Works and Senate Governmental Affairs and House Government Operations and House Public Works and Transportation Committees) in a timely fashion.

It is also recommended that the Administrator or Secretary, as appropriate, provide the appropriate committees of Congress with notification of any changes he wants to make in time for appropriate congressional review. By written notification we mean the submission of a letter and descriptive plan for any such modifications to the committees previously cited. It is recommended that such letter be provided at least 60 days prior to the planned effective date of such modifications. Hence, when the current Administrator creates the new Assistant Secretary structure, it is recommended that he do so in advance of the effective date of the Act, making whatever changes he determines necessary within the construct provided for in this bill. After the act becomes effective, any changes in Assistant Secretary assignments should be explained by letter to the appropriate Senate and House committees as least 60 days prior to the effective date of such changes.

In the establishment of Assistant Secretary positions, the Committee acted to strengthen functions that it has found to be historically weak throughout the Federal Government. Therefore, the legislation requires that the Secretary of USDE designate Assistant

Secretaries as Chief Financial Officer (CFO) and as Chief Information Resources Management Officer (CIRMO).

In the case of a CFO, the Secretary is to designate the Assistant Secretary whose responsibilities include financial and budget management as the Chief Financial Officer, to be selected on the basis of demonstrated ability in financial and other management areas. It lists five broad responsibilities for that officer. The Committee believes there is a need to appoint of CFO who can work with the multi-billion dollar budgets and financial management systems the new Department will command. The CFO will be the principal advisor to the Secretary of the Department regarding financial management.

The CFO would have direct responsibility for the development and maintenance of financial, internal control and accounting systems including credit, cash and debt management systems. These systems would allow the CFO to supply the Secretary with consistent, reliable, compatible and useful financial data with which to make decisions for the direction of his Department. Information on the costs incurred in running the Department as well as the integration of accounting and budget information would give the Secretary needed insight with respect to his agency's true overhead and budget execution.

In the supervision of financial management activities for the Department, the CFO would develop the financial management budget including costs for automated data processing (ADP) technology and enhancement, internal control processes and auditing. Long range planning, a key component in management, would be carried out and periodically revised by the CFO covering all financial management activities. The CFO would oversee credit and cash management, credit extension and loans, debt servicing and collection, and any other credit management activities undertaken by the Department.

Finally, the CFO would be responsible for monitoring the execution of the Department's budget in relation to expenditures and report these findings to senior managers. This would allow the Secretary to see how well the Department is achieving its goals through the use of its annual appropriation.

Section 204 also requires the Secretary to designate a Chief Information Resources Management Officer who will advise the Secretary and develop and maintain an information resources management system. The Committee intends that in the establishment of the Chief Information Resources Management Officer there not be a conflict in responsibility with the Director of the Bureau of Environmental Statistics. The CIRMO should have responsibility over Departmental information collection policies, principles, standards and guidelines with respect to Departmental operations. The Director of the Bureau of Environmental Statistics designated under Section 208 will be accountable to the Secretary for assuring the Bureau's compliance with relevant policies, principles, standards and guidelines as they are administered by the CIRMO. The Committee does not intend to allow the CIRO's responsibilities to interfere with the Director's responsibilities under Section 208(a)(1) in the collection and reporting of data or in the assurance that data

collected and reported are accurate, reliable, and relevant in a usable form.

Section 205. Deputy assistant secretaries

This section authorizes the Secretary to establish, appoint, and prescribe duties for Deputy Assistant Secretaries, at least one-half of whom are to appointed to positions in the career Senior Executive Service. It allows the Deputy Assistant Secretaries to perform some Assistant Secretaries' functions in certain circumstances. It requires that when personnel management, labor relations, or equal opportunity functions are performed by Deputy Assistant Secretaries such Deputy Assistant Secretaries must be in career Senior Executives Service positions.

Section 206. Office of the General Counsel

This section establishes an Office of the General Counsel, headed by a General Counsel appointed by the President with the advice and consent of the Senate.

Section 207. Office of the Inspector General

This section redesignates the current Office of Inspector General as the Office of Inspector General of the Department of the Environment.

Section 208. Bureau of Environmental Statistics

This section establishes within the Department of the Environment an independent Bureau of Environmental Statistics, with seven major activities relating to measuring environmental quality: collecting and analyzing environmental quality measures; promulgating guidelines for collecting data; coordinating the collection of environmental quality measures with Federal information gathering activities; making required data readily accessible; publishing timely summary measures; gathering conditions and trends information; and, coordinating with Departmental research offices to identify data needs.

This section specifies that confidentiality is governed by those statutes which authorize the data collection, and that in those instances where the Bureau requires data under the authority of Section 208, such information may not be published or released so as to identify the provider. More generally, the Committee intends that the provisions of this law regarding access, disclosure, and confidentiality, particularly of programmatic data, are to be implemented in a manner consistent with related laws, including, but not limited to: the Freedom of Information Act (5 U.S.C. 552); the Privacy Act (5 U.S.C. 552(a)); the Government in the Sunshine Act (5 U.S.C. 552(b)); the Emergency Planning and Community Right to Know Act (P.L. 99–499, Title II, Section 313); and the Computer Security Act (15 U.S.C. 272).

The section requires that the Bureau of Environmental Statistics be headed by a Director of Environmental Statistics, appointed for a four year term by the President with the advice and consent of the Senate. It requires an annual environmental statistics report. This section also authorizes the Secretary of the Department of the Environmental Statistics to advise the Director. It authorizes the

Secretary to make grants to and enter into contracts with state and local governments to assist them in meeting short-term costs of collecting specific data. Authorizations for the Bureau would be $2.8 million for fiscal year 1991 and $5.4 million for fiscal year 1992.

Because of the importance of the provision creating the Bureau of Environmental Statistics, the Committee believes that a fuller discussion of its origin and implications is warranted.

BACKGROUND

The increasing complexity of environmental concerns both here and abroad makes more imperative the need for credible environmental information. The more we know about the changes taking place and the problems we are confronting the better our ability to address them. Such has been the guiding philosophy behind the collection of economic data over the past fifty years. It was recognized as early as 1888 in the establishment of the Bureau of Labor (which would later become the Bureau of Labor Statistics) that accurate data collection and analysis are critical in the formulation of economic policy. In contrast, systematic data collection concerning the environment is of a much more recent vintage. In addition, there are generally not adequate controls on the quality of information collected to ensure its accuracy and sufficiency. As one of our witnesses, Dr. Paul Portney testified to the Committee:

> The gathering of environmental data has been haphazard at best. The various environmental monitoring programs that do exist are often inadequate. Even though the monitoring and reporting of air quality data is now the clear high spot of environmental statistics, there is no national program that monitors all the toxic air pollutants and at least some of the data on air pollutants that *are* monitored are insufficient.

The Committee therefore deemed important the establishment of an independent statistical entity which would centralize data collection and compilation, ensure a high level of quality in the data collected, and analyze and report on such data in an objective way and on a yearly basis.

The Bureau is given seven basic functions:

(1) Collecting, analyzing, assembling, and reporting a comprehensive set of environmental quality measures, not necessarily limited to those aspects of the environment under jurisdiction of the Department; measures in this case are interpreted as "indicators" of environmental quality such as data on the concentration of pollutants in air, water and soil, changes in climatic conditions, indications of how many river miles are meeting water quality standards or of how many persons of a particularly sensitive population are being exposed to a particular pollutant or environmental condition. These measures would also include indications of the effects of environmental pollution on the public and the environment. For instance, the BES would either develop or obtain statistically representative data on how many persons suffer from respiratory ailments which may be attributable to a specific or select groups of pollutants, how much agricultural production is lost due to the ac-

cumulation of toxics in the soil; the effect of ozone depletion on the incidence of skin cancers, etc. As specified in the bill, the measures should include (but are not limited to) data—

(A) on the nature and amount of pollutants in the environment; and

(B) regarding the effects on the public and the environment of those pollutants;

The Committee intends that the Bureau engage only in data collection and analysis functions. In so doing, it should characterize the extent of effects, but not make judgments about the policy to address them. The Committee does not intend the Bureau to provide policy recommendations.

(2) promulgating guidelines for the collection of the data required for the measure under paragraph (1) to assure that the data are accurate, reliable, relevant, and in a form that permits systematic analysis.

The Committee is concerned that a quality assurance mechanism be put in place to ensure data collected are of high quality and assembled in forms able to be analyzed systematically (i.e. using statistical techniques). This is consistent with the EPA's earlier role in developing guidelines on assuring and controlling the quanlity of environmental information obtained by monitoring.

(3) Coordinating the collection of such measures with related information-gathering activities conducted by other Federal agencies; (except the Bureau shall not collect data if the Bureau can obtain equally reliable data more efficiently from another agency.)

With respect to this provision, the Committee strongly encourages the Bureau to ensure that its annual Environmental Statistics Report appropriately complements the CEQ Environmental Quality Report. The Committee also encourages the Bureau to coordinate its activities with international data collection agencies, including, but not only, the World Meteorological Organization and the United Nations Environment Program. We believe that international coordination and integration of data collection is highly desirable.

(4) making readily accessible the data required for the measures under paragraph (1).

In this regard, it is the Committee's intention that all data consistent with other provisions of this bill (and other related laws and regulations) be available to the public in as easily accessible form. Although it is expected that the Chief Information Resources Officer shall implement all government-wide and Department information, policies, principles, standards, and guidelines with respect to the sharing and disseminating of information, including a policy on public availability, the Committee intends that the Bureau develop its own public access policy. The confidentiality language included in the bill is meant to emphasize that data collected under this statute are protected from release for trade secret, proprietary or personal confidentiality reasons.

(5) Publishing, in accordance with the Bureau's primary responsibility, timely summary measures in the form of industry-wide aggregates, multiyear averages or totals or some similar form.

The Commmittee intends with this provision that the Bureau shall publish, for example, industry-wide or region-wise aggregated emissions data rather than such data specific to individual entities.

(6) Gathering timely and authoritative information concerning the conditions and trends in the quality of the environment and to compile and submit to the President studies relating to the same.

In addition to the annual Environmental Statistics Report (discussed later), this provision is intended to provide the Bureau with the authority to undertake other analyses from time to time on general environmental issues related to the data collected by the Bureau.

(7) Coordinating with appropriate Departmental research officals to identify missing data, reviewing these information needs with the Science Advisory Board, and assisting appropriate Departmental research officials in maintaining intramural and extramural research programs to provide such information.

The Committee is increasingly aware of the serious adverse health effects posed by a wide variety of pollutants and toxic chemicals. To give one example, of the 200 industrial chemicals to which more than one million Americans are exposed each year (according to NIOSH estimates), 65 (33%) have shown some evidence of neurotoxicity. It is vitally important that the new Department promote and maintain long-term research on the adverse effects of pollution and options for managing such environmental risks.

This provision gives the Bureau of Environmental Statistics a role in maintaining an effective long-term research program in the Department. Under section 208(a)(1), the Bureau is responsible for gathering and analyzing data on "the nature and amount of pollutants in the environment" and on "the effects on the public and the environment of these pollutants." The provision requires the Bureau to help the appropriate research officials in the Department to identify missing data of this nature that are needed, and to assist them in maintaining research programs to provide this information.

The Committee took as models for designing the position of the Director of the Bureau, both the Commissioner of the Bureau of Labor Statistics in the Department of Labor and the Director of the Energy Information Administration in the Department of Energy. The heads of both of these entities are Presidential appointees. The head of BLS has a fixed, four year term. The head of EIA also has a fixed, four year term.

The Committee believes that the head of the Bureau, by virtue of being a Presidential appointee with a fixed term, will be accountable to the Executive and also will occupy a sufficiently high level of visibility and stature to promote rigorous aid in the performance (and security) of his/her duties. In addition, the section includes language which allows for the removal of the Director only for malfeasance of office or neglect of duty.

The Committee set the first reporting date for the Bureau's Environmental Statistics Report on January 1, 1992 and for subsequent Reports every Janaury 1 thereafter.

Section 209. Miscellaneous employment restrictions

This section limits the number of Senior Executive Service positions filled by noncareer appointees to 12 percent of the total number of senior executives in the Department. It also prohibits taking political affiliation into account in employment appointments, assignments and advancements, and requires the Secretary to report annually on the costs of implementing Title II. The Committee set the limit at 12 percent of all senior executives (as opposed to all senior executive positions). It believes that this is a reasonable and appropriate limitation.

The bill requires that the reports on implementation stipulated by this section be done after the first and third years of the new Department's existence. The Committee intends that the reports be made to the House Committees on Government Operations and Public Works and Transportation, as well as the Senate Committees on Governmental Affairs and Environment and Public Works.

Section 210. Administrative provisions

This section allows the Secretary to accept money, uncompensated services, and other real and personal property or rights, credited to a separate fund in the Treasury, for carrying out the Department's programs and activities, but prohibits the Secretary from endorsing any company, product organization or service. This section also requires the Secretary to prescribe regulations and guidelines setting forth the criteria to use in determining whether to accept a gift, bequest or devise.

The Committee intends in this section to allow authority for the new Department to receive donations (as is provided for in numerous other authorizing statutes, including, but not limited to 7 U.S.C. Sec. 2269, Department of Agriculture; 15 U.S.C. Sec. 1533, Department of Commerce; 22 U.S.C. section 2697 (a)-(f), Department of State; 38 U.S.C. Sec. 5103-5, Department of Veterans Affairs; 42 U.S.C. Sec. 3535(k), Department of Housing and Urban Development; 42 U.S.C. Sec. 7262, Department of Energy; 48 U.S.C. Sec. 3481, Department of Education).

The Committee intends that the Department may accept gifts only for legitimate departmental purposes and in accordance with the terms of their donation. It also expects that regulations will be promulgated to ensure that criteria are established to prevent conflict of interest or the appearance of conflict of interest in a gift's acceptance. The bill requires that any gifts, bequests or devises be placed onto a separate fund in the Treasury and that money be allowed to be spent only at the order of the Secretary of the Environment. The Comptroller General has issued several decisions on the question of the proper use of private donations. In a 1980 letter to Senator Proxmire, the Comptroller General states:

> While an agency's determination of whether a particular expense was justified would be accorded great weight, agencies do not "have blanket authority to use [donated] funds as being incident to the terms * * *" of the statutory authority permitting acceptance of said donations. He went on to state that "[t]he burden is on the [agency] to

show that its * * * expenditures were to carry out [authorized statutory] puposes."

In an earlier decision, the Comptroller General ruled that when an agency or department is authorized to accept gifts or bequests that are made to aid or facilitate the work of the department or agency, it must be presumed that acceptance of the gifts or bequests are for the purposes authorized by the act establishing the department or agency. A third decision of the Comptroller General stipulated that donations or gifts must be administered "in accordance with existing laws pertaining to the use of public monies."

Section 210 also establishes the Environmental Protection Agency seal as the seal of the new Department. In addition, Section 210 authorizes the Secretary to redesign the seal at any time he/she chooses. The provision amends Title 18 of the United States Code relating to criminal penalties for illegal use of federal symbols and insignia (18 U.S.C. 716) to allow for fines of not more than $250 or 6 months imprisonment for displaying the official Department seal to convey a false impression of Federal sponsorship and reproducing or selling the seal of the Department of the Environment. The Attorney General may sue upon complaint of any authorized representative of the Secretary of the Environment.

This section also allows the Secretary to promulgate regulations regarding standards of conduct for members of advisory committees and to pay members of advisory committees.

Finally, this provides the Department with the authority to acquire rights to copyrights, patents, and applications for patents, designs, processes and manufacturing data, rights to licenses under copyrights, patents and applications for patents; and releases, before suit is brought, for past infringement of patents or copyrights. Such rights may be acquired, if the property acquired thereby is for use by or for, or useful to, the Department.

The Department operates several laboratories throughout the country engaged in research regarding pollution control technology and equipment, and to the extent such research leads to new processes or technological developments, this section authorizes the Secretary to acquire same if such property is useful to the Department.

Section 211. Inherently governmental functions

This section requires that inherently governmental functions such as policy/decisionmaking and managerial responsibilities should be performed only by officers and employees of the United States government. It also directs the Secretary to promulgate regulations which require that public notice be given if awarding of contracts, agreements or other arrangements for advisory and assistance services may result in or give the appearance of a potential conflict of interest. It requires the Department to establish central files for conflict of interest public notices.

This section's provisions affect the way in which USDE may use contractors and consultants. The provisions are based on findings from several hearings held by the Committee on Governmental Affairs Subcommittee on Federal Services, Post Office and Civil Service.

Subsection (a) requires that "inherently governmental functions" be performed only by officers and employees of the United States. "Inherently governmental" is defined as any activity so intimately related to the public interest as to mandate performance by federal employees. Inherently governmental functions include those activities which require the exercise of discretion in applying Governmental authority, the use of value judgment is making government, decisions, as well as work of a policy, decisionmaking, or managerial nature that is the direct responsibility of Department officials. This language is taken directly from the Office of Management and Budget's (OMB) Circulars A–76 and A–120, which control the use of contractors and consultants by the Executive branch.

Hearings have shown that EPA uses contractors and consultants for many tasks which should properly be performed only by federal employees, and thus EPA appears not to be in full compliance with the circulars. For example, EPA has used contractors to draft Congressional testimony, draft regulations, interpret regulations, draft enforcement letters, and represent EPA at international conferences. In a response to an inquiry about EPA's use of a particular consultant, GAO stated, "We agree with OMB that the interpretation of agency regulations should be performed by federal employees." (GAO opinion #B–237356, December 29, 1989)

Though EPA officials testified that the Agency currently abides by the OMB policies, it is obvious from EPA contract files that this has not always been the case. Creating a statutory requirement that the USDE must use federal employees for inherently government tasks in accordance with this subsection, will heighten USDE's awareness of and adherence to this policy. Indeed, the Committee commends to USDE a detailed list developed by the Department of Energy. DOE lists several government functions which should be performed only by federal employees (DOE Order 4200.3B). This list should guide USDE in determining which functions are improper to give to contractors. The list includes but is not limited to: development of budget policy, guidance, and strategy; determination of the success or failure of DOE internal management and program management activities; determination of reporting requirements; promulgation of any regulation; determination of the legality of proposed policies; determination and advocacy of legislative initiative on behalf of the Department; and representation of DOE in policy matters.

The Committee recognizes that certain EPA contracts provide for contractors to supervise, coordinate, or integrate the non-policy work of other contractors and sub-contractors, such as in the Alternative Remedial Construction Strategy (ARCS) program. To the extent such activity facilitates and expedites the remedial construction program, it is consistent with this subsection.

Subsection (b) establishes a public notice system at USDE. The Secretary is to promulgate regulations requiring public notice whenever the Secretary determines that the award of a contract for advisory and assistance services may result in a conflict of interest or give the appearance of a potential conflict of interest with respect to the contractor (a) being able to render impartial, technically sound, or objective assistance or advice in light of other activi-

ties or relationships with other persons or (b) being given an unfair competitive advantage.

It is anticipated that the USDE, like DOE, will continue to use contractors and consultants. In those instances when EPA properly uses consultants, the public notice will alert interested parties to the actual conflict or to the appearance of a potential conflict of interest.

At the same time, the Committee assumes that USDE will continue its current policy of avoiding or mitigating conflicts, apparent conflicts, and potential conflicts of interest. However, in the event that such conflicts cannot be avoided, the Committee expects a public notice will be issued that outlines the findings of the Secretary or his designee concerning such conflicts of interest and, to the extent feasible, detail any mitigation procedures that will be used. A public notice is not required before contract award; notice within 60 days of the award should be sufficient.

USDE should continue to be guided by Subpart 9.5 of the Federal Acquisition Regulations (FAR) and Subpart 1509.5 of the EPA procurement regulations, which discuss how to identify and handle actual, apparent, and potential conflicts of interest. The Committee recognizes that regulations will be issued soon by the Office of Federal Procurement Policy (OFPP) pursuant to Policy Letter 89–1 regarding consultant registration. The OFPP policy letter should ensure that the USDE contracting officers will have not, if not all, of the relevant information necessary to make an informed judgment. The policy letter also emphasizes that making a determination regarding such conflicts of interest is the government's responsibility and should not be left to contractors.

The Committee notes that DOE considers "appearance" when it examines potential conflicts of interest. However, it seems that EPA does not consider appearance in its contracting practices. The following is an example from EPA regulations (48 CFR 1509.509(b)) which describes an appearance of a conflict of interest that should be avoided or mitigated:

> Company A, in response to an RFP [Request for Proposals], proposes to undertake an economic analysis of one segment of the chemical industry. Company A advises that it derives a substantial portion of its income from the industry to be studied. Normally this would constitute an OCI [Organizational Conflict of Interest] and a contract would not be awarded to Company A. It would be placed in a position in which its judgment could be biased in relation to its work for EPA. Should award be made to Company A, the *appearance* of an OCI could undermine the credibility of the data generated under the contract and render such data useless for its intended purpose, regardless of whether any bias is actually reflected in the data. (emphasis added)

Nevertheless, the Committee found that EPA has awarded policy support contracts to firms that appear to be disqualified by the above example. Furthermore, EPA contract files contain little or no documentation to explain why the agency has awarded these contracts despite apparent conflicts of interest. Requiring USDE to consider specifically the "appearance of a potential conflict of interest" is intended to address this problem. EPA's past insensitivity

to "appearances" of conflict suggests that attention needs to be paid by the agency to all manner of such appearances, including appearances of potential conflicts of interest. This is the motivation behind the language in the bill.

The notice requirement in subsection (b) is similar to a DOE regulation (48 CFR Subpart 909.570–9) which has been in place for almost ten years. The subsection is intended to reflect the same policy as is currently in place at the Department of Energy.

Subsection (c) simply states that this section does not prevent USDE from issuing regulations that will allow the Department to monitor actual, apparent, or potential conflicts of interest after the contract is awarded. The Committee understands that EPA is currently working on such regulations and that it does not intend to abandon that effort.

Subsection (d) contains the implementation date for this section, which is not later than thirty days after the effective date of this Act.

Subsection (e) requires the Department to maintain a central file of all public notices issued under subsection (b). Included in the file should be relevant information on which the decision to publish a public notice was based. Access to the central file should be controlled to protect proprietary information in accordance with existing requirements, including the Freedom of Information Act.

Subsection (f) incorporates the definition of advisory and assistance services contained in OMB's Circular A–120. The subsection excludes "routine technical services" from the definition.

Section 212. References

This section provides that current references in law or other documents to the Administrator, the Environmental Protection Agency, the Deputy Administrator, and any Assistant Administrator are deemed to refer to the Secretary, the Department of the Environment, the Deputy Secretary of the Environment, and Assistant Secretary, respectively.

Section 213. Savings provisions

This section provides that legal documents, orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges and other administrative actions issued by the president or EPA shall continue in effect after the effective date of this Act. The provisions of this Act shall not affect any proceedings or any applications for any license, permit, certificate, or financial assistance pending before the EPA at the time this Act takes effect. The provisions of this Act shall not affect suits commenced before the date this Act takes effect. Administrative actions relating to the promulgation of regulations are not affected by enactment of this Act. The Department of the Environment and its officers, employees, and agents shall have all the powers and authorities of the EPA.

Section 214. Conforming amendments

This section specifies various technical amendments to the U.S. Code.

Section 215. Additional conforming amendments

This section requires the Secretary, after consulting with the Senate Committees on Governmental Affairs and Environment and Public Works and appropriate House committees, to submit, within six months, proposed legislation containing technical and conforming amendments to the United States Code to reflect changes made by this Act.

TITLE III—ESTABLISHMENT OF THE INTERAGENCY COMMITTEE ON GLOBAL ENVIRONMENTAL CHANGE

This section contains the finding that the United States must coordinate attention to policy-making regarding global environmental change at both the domestic and international levels, and that developing effective policies responding to those changes will require greatly improved scientific understanding and capability. The section also includes a finding that a Cabinet-level, interagency committee is required to coordinate the design and implementation of Federal policy responses to problems of global environmental change and that such a committee should report directly to the President. The Committee is aware of current efforts to coordinate research activities on global environmental problems, particularly, though not exclusively, global climate change. The purpose of the new interagency committee is to support those efforts by providing an overarching, statutory, cabinet-level, policy-making, coordinating committee.

Section 302. Establishment

This section authorizes the President to establish the Interagency Committee on Global Environmental Change (hereafter ICGEC) within the executive Office of the President. ICGEC members include the Secretaries of Environment, State, Treasury, the Attorney General of the United States, the Secretaries of the Interior, Agriculture, Commerce, Health and Human Services, Transportation and Energy; the Director of the Office of Management and Budget; the Director of the National Aeronautics and Space Administration; the Director of the White House Office of Science and Technology; the Chairman of the Council on Environmental Quality; the United States Trade Representative; and the Chairman of the President's Council of Economic Advisers.

Section 302 authorizes the President to name additional officers and officials to the ICGEC as he deems advisable and designates the Secretary of the Environment as ICGEC Chairman. The Executive Director, appointed by the ICGEC, is authorized to hire as many as ten technical staff members. This section also authorizes Federal agencies to detail personnel and provide support services to assist the ICGEC in carrying out its functions.

During markup of S. 2006, Senator Lieberman offered an amendment to require that the Secretary of the Environment be named chairman of the ICGEC. The Committee finds that this is entirely consistent with the main purpose of the bill, which is to create a Cabinet-level Secretary of the Environment, with enough status and authority to take the lead in establishing and coordinating our country's environmental policy, including our international and

global environmental policy. This provision does not interfere with the President's control over the ICGEC, since the Secretary of the Environment, like the other Department heads, is appointed by and must answer to the President, and the President can also name additional members to the ICGEC.

Section 303. Functions of the ICGEC

Section 303 directs the ICGEC to provide advice and assistance to the President in coordinating domestic and international programs, plans, and policies of all Federal agencies related to global environmental change, and in delivering annually a policy plan to Congress. The plan is to cover the subsequent fiscal year, is to be commensurate with related Federal efforts, and is meant to ensure that Federal policy responses to global environmental change problems are coordinated among all Federal agencies, United States-supported aid institutions, and other international organizations to which the United States belongs and to ensure that such policies are designed to address problems of global environmental change. The plan may include the President's recommendations for legislation that would facilitate the objectives of the ICGEC.

This section also requires the President to submit biannually to the Congress a report on the ICGEC's progress toward meeting the plan's goals.

Section 304. Relation to other laws

This section directs the President and the ICGEC to ensure that the activities carried out by the Departments of Environment and State under the Global Climate Protection Act of 1987 (P.L. 100-204) are considered in the Federal global environmental program. The Committee also notes this reference as indicative of its interest in having the ICGEC complement current activities.

TITLE IV—ENVIRONMENTAL ROLE OF THE UNITED STATES IN INTERNATIONAL ORGANIZATIONS TO WHICH IT BELONGS

Section 401. Findings

The section contains the finding that the United States should continue to provide leadership in developing and implementing an international response to global environmental change. Effective response policies will address issues of waste management, air and water pollution, marine pollution, energy generation and use, sustainable development, and land management, and will require concerted international action.

Section 402. Multilateral lending considerations for energy conservation and environmental protection

This section strongly urges the Secretary of the Treasury, with the advice of the Interagency Committee on Global Environmental Change, to instruct the U.S. Executive Director to each multilateral development bank to consider and promote energy conservation and environmental protection efforts of borrowing countries when voting to issue loans and other financial or technical assistance.

The testimony of Ambassador Peter Jon De Voss at our February 6 hearing indicated the Administration's support of this provision:

> Section 402 is supportive of current Administration efforts to promote the consideration of environmental goals, including energy conservation and financial assistance programs.

Section 403. International Energy Conference

This section authorizes and strongly urges the Secretary of State, with the Secretaries of Energy and Environment, and the advice of the ICGEC, to work toward convening an international meeting in the United States to encourage information exchange on energy efficiency and environmentally sound and ecologically sustainable renewable energy resources. The Committee believes that the subjects to be addressed by the energy conference should include ways of providing financial and other assistance needed by developing countries to take advantage of the opportunities presented by energy efficiency and renewable energy technologies. In the wake of such a meeting, the Committee would fully expect involved agencies to come up with recommendations on how such assistance can be provided. The Committee also wants to make clear that the purpose of this section is not to duplicate but to reinforce existing efforts in this area.

Again, Ambassador de Vos, the State Department witness on February 6 indicated Administration support:

> Under the proper circumtances convening of an international meeting to exchange information on energy efficiency and renewable energy could complement * * * existing programs and further enhance global awareness of technologies reducing fossil fuel use.

Section 404. Multilateral Global Climate Protection Convention

This section authorizes and strongly urges the Secretary of State, with others, to convene an international meeting in the United States encouraging the adoption of a multilateral global climate protection convention. It also authorizes and urges the Secretray of State, with the Secretary of the Environment, to sponsor additonal meetings to attain a convention open for signature by the end of 1993. The Committee recognizes that progress toward a multilateral convention on global climate change, organized by the Secretary and the U.S. Science agencies, can only be achieved if the U.S. and other industrialized countries make clear from the start their own willingness to substantially reduce emissions of greehouse gasses. The Committee received testimony from Administration witnesses supporting the need to coordinate U.S. domestic and international environmental policy.

The Administration does support this provision. Ambassador De Vos noted:

> Section 404 coincides with and is supportive of U.S. Government policy.

Section 405. International Greenhouse Gas Monitoring Program

This section calls for the President to encourage the establishment of an office of the United Nations Environment Program (UNEP) and the World Meteorological Organization (WMO) to

monitor and estimate annual generation and removal of carbon dioxide and trace gases on a country-by-country basis. That office is also to assist negotiations and administration of a global protocol.

Here, again, Ambassador de Vos indicated Administration support:

> Likewise Section 405 is consistent with the Administration's support for the monitoring of carbon dioxide and other greenhouse gas emissions.

Section 406. Relation to other laws

This section requires that activities authorized herein are administered in a manner consistent with those duties assigned under the Global Climate Protection Act (P.L. 100-204).

TITLE V—ESTABLISHMENT OF THE COMMISSION ON IMPROVING ENVIRONMENTAL PROTECTION

Section 501. Findings

This section finds that Federal environmental programs have different approahces to regulating pollutants and addressing cross-media residuals management issues, and that numerous Federal agencies, offices and bureaus are charged with environment protection responsibilities.

Section 502. Establishment; membership

This section establishes a 13-member Commission on Improving Environmental Protection, with 7 members appointed by the President, 3 by the Speaker of the House, and 3 by the Senate Majority Leader. The President in consultation with the Congress appoints the Chairman, and the Secretary of the Department of the Environment serves ex officio.

Section 503. Commission Responsibilities

This section outlines the responsibilities of the Commission to examine and make recommendations on improving U.S. environmental protection capability. It requires the Commission to make recommendations to the Congress and the President on (1) the need for strengthening pollution control administration and regulation (2) improved institutional arrangements or regulations that would improve the integration and delivery of Federal environmental protection, research and planning, and (3) specific steps and proposals for implementing the Commission's recommendations.

Much discussion about this section occurred in the Committee's three days of hearings on this bill.

The findings regarding the role of the Commission title drew considerable criticism from a number of quarters. These concerns involved both expanding and restricting the "charter" of the Commission. To succeed, the Commission will therefore need to both (1) have the flexibility to *broadly* examine the organization, management, structure, regulation, and statutory efficiency and effectiveness of environmental policy and (2) maintain credibility by not "overreaching" into fundamental public policy areas such as focusing on the "adequacy" of the major environmental legislation or

the basic jurisdictional divisions between public health, occupational safety, and environmental protection.

The Committee is listing a number of general guidelines for the Commission, taking into consideration these two general factors—flexibility, tempered by a sufficiently defined and credible mandate. The Commission should:

(1) examine statutory consistency and integration, particularly the way existing statutes are implemented and coordinated, but this title is not intended to encourage unlimited exploration of the adequacy of legislation or to provide a mandate to develop a "unitary" statute;

(2) maintain its objective relationship to the organizations it is examining in order to retain credibility.

(3) fully develop all organizational, legislative, or management options;

(4) explore both current and *future* policy relationships;

(5) review local, state, private, regional, and international relationships;

(6) solicit input from organizations involved with the issues, such as CEQ, NOAA, Corps of Engineers.

The Committee is sensitive to these concerns as reflected in the findings dealing with the organizational aspects of the Commission's work. The Commission's work includes examining the ways in which USDE and other agencies manage their responsibilities under the major federal environmental statutes. The Committee's intent is that the Commission undertake this task with an eye toward identifying management overlap, and recommending ways to better integrate different authorities, not to suggest substantive changes in the policy expressed by existing laws.

The Committee is also concerned that there is a lack of coordination in federal environmental programs affecting the areas of cross-media and residuals management. A lack of clear direction in this area has sometimes resulted in shifting contamination from one media to another. Many industries are subject to more than one environmental law. Frequently, these laws have conflicting provisions. By complying with one statute, an industry could find itself ultimately shifting pollution to another media. This situation only underscores the need for this Commission to carefully examine the management of residuals on a cross-media basis.

Other examples of such problems include the regulation of major toxic chemicals where the Environmental Protection Agency, the U.S. Food and Drug Administration, and the Department of Health and Human Services all have regulatory responsibility, the regulation of radionuclide emissions, where EPA and the NRC have overlapping responsibility, and the regulation of mixed waste, in which the responsibilities of EPA and the Department of Energy overlap. The Committee hopes that the Commission will examine coordination among the several federal agencies in these and other areas, and will look at the development of integrated standards and policies on environmental protection throughout the federal government.

It is expected by the Committee that the members of the Commission (which number 13, including the Chairman) will include experts in governmental organization with particular emphasis on

environmental organization and the management of environmental regulations. The Committee recommends that, in the interest of political balance, no more than seven members of the Commission should be from any one party. The Commission is expected to abide by the provisions of the Federal Advisory Committee Act (FACA). Finally, it is the Committee's intention that the members of the Commission shall be appointed as Special Government employees (as defined under section 202 of title 18, United States Code).

As noted earlier, we also believe that it is the province of this Commission to examine the larger question of how we have organized environmental policymaking in our government. The Committee believes that the Commission should carefully examine the relationship of the USDE to CEQ, NOAA, and other agencies with missions related to environmental policy and protection and provide recommendations on the future organization of environmental policy. The Commission should also examine the institutional arrangements by which environmental research is carried out and make recommendations as to the establishment, organization, and management of such activities within the new Department.

Finally, the Committee believes that the Commission should examine the need to develop incentives for the integration of environmental and technology policies. Increasingly, there is evidence of a need for heightened sensitivity to environmental concerns in the development of new technology, so much so that some believe environmental protection management would be far easier if federal statutes offered some pollution-based incentives to take environmental factors into account at the "front end".

Section 504. Report to the President and Congress

This section requires the Commission to report on its investigation, findings and recommendations to the President and Congress in an interim report within 1 year and a final report within 2 years. Section 504 requires that the interim report be made available for, and reflect, public comment.

Section 505. Commission staff

This section authorizes the Commission to appoint an Executive Director and sufficient staff for carrying out the Commission's duties.

Section 506. Advisory groups

This section allows the Chairman of the Commission to convene at least one advisory group composed of past Department and Environmental Protection Agency staff, other Federal and State environmental officials, members of the regulated community, and members of public interest groups. This section also authorizes per-diem pay to advisory group members. The Committee prohibits the payment to members of advisory groups of more than the rate afforded GS–18 employees. In addition, it would make such advisory groups subject to FACA, the Federal Advisory Committee Act.

Section 507. Funding; authorization of appropriations

This section authorizes $3 million for fiscal year 1991 and $5 million for fiscal year 1992.

TITLE VI. EFFECTIVE DATE

This sets the Act's effective date as the date the President directs in an Executive Order within six months of enactment, or failing such direction, the effective date is six months after enactment.

VI. Additional Issues

CEO AND THE BUREAU OF ENVIRONMENTAL STATISTICS

Background

The origin of the Council on Environmental Quality can be traced to the late 1950s and early 1960s when Congress began to consider proposals for Executive Office coordination of environmental and resource conservation policies. The model was to be the President's Council of Economic Advisors. In the late 1960s a movement began to declare a national environmental policy, a movement which issued in the National Environmental Policy Act of 1969 (NEPA, PL 91-190) NEPA contains provisions requiring Federal agencies to prepare environmental impact statements on all "major Federal actions significantly affecting the quality of the human environment." In addition NEPA set up the Council on January 1, 1970 (hereafter referred to as CEQ) as a three-member advisory and policy coordination group in the Executive Office of the President. Its duties include advising the President on environmental policy matters, overseeing the implementation of national environmental programs, conducting various information, research and education activities, and acting as a forum to review NEPA challenges and interagency disputes. It is also required to provide an annual report on environmental quality to the President for submission to the Congress.

An Office of Environmental Quality acts as staff to the Council, and was created by the Environmental Quality Improvement Act of 1970 (PL 91-224). According to the Congressional Research Service, from 1970 until about 1982, budget appropriations for these organizations averaged approximately $2.6 million per year. Appropriations fell off dramatically in 1983, with just under $1 million requested and provided, effectively eliminating the Office of Environmental Quality as a viable, organizational entity. Between 1983 and 1987 (inclusive) funding for the Council was just $803,000. Similar levels continued through 1989. In 1990, the budget request was $1.46 million and for Fiscal Year 1991, President Bush is proposing a funding level of $2.78 million, a 90 percent increase. In his budget message, the President proposed to "strengthen CEQ and to ensure that it has the capacity to serve as an effective source of environmental analysis and information in the White House."

CEO'S FUNCTION AND NEPA REPORT REQUIREMENTS

The concern expressed by numerous witnesses at our hearings on EPA elevation was that establishing a Bureau of Environmental Statistics and giving it the responsibility to collect data and issue an annual report would supplant the chief function of CEQ. However, if one compares CEQ's statutory mandate with the requirements of S. 2006 as ordered reported by the Committee, it is clear

that the Bureau will complement, rather than supplant, CEQ's work. S. 2006 neither amends NEPA nor affects CEQ's Annual Environmental Quality Report requirement.

CEQ'S ANNUAL ENVIRONMENTAL QUALITY REPORT

A comparison of CEQ's and the Bureau's authorities follows. CEQ's annual report requirement as it appears in NEPA is straightforward:

The annual report to be transmitted by the President to the Congress is to contain information on the following:

(a) "Status and condition of the major natural, manmade, or altered environmental and ecosystem classes of the Nation."

(b) "Current and foreseeable trends in the quality of such environments and their effects * * *"

(c) "The adequacy of available natural resources * * *"

(d) "A review of the programs and activities * * * of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment."

(e) "A program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation."

The annual report of the Bureau, which is a report separate and distinct from the CEQ report, is to be made to the President. It is meant to include but not be limited to:

(1) data on environmental quality. These data may be used by CEQ in its preparation of the Environmental Quality Report.

(2) data on human health related to environmental quality and nonhuman species and ecosystems, and analysis of chances and trends.

(3) documentation of the method used to obtain and assure that quality of the date presented in the Report.

(4) economic information on the current and projected costs and benefits of environmental protection.

(5) recommendations on improving environmental statistical information.

Thus, two major reports will be produced. The CEQ's Annual Environmental Quality Report and the Bureau of Environmental Statistics Annual Environmental Statistics Report. The Committee intends that CEQ retain its role in preparing the Annual Report to Congress, including policy recommendations. On the other hand, the Committee intends the Bureau to report to the President on the results of its data collection and analysis. Again, the Committee notes that CEQ could use the Bureau's data and analysis in formulating its policy recommendations. To reiterate, which respect to the authority given the Bureau to "compile and submit to the President studies relating to such conditions and trends" the Committee intends for the Bureau to have authority to issue periodic reports to the President. It does not intend that the Bureau should supplant the traditional role provided for CEQ in either section 201 or section 204(7) of NEPA.

Conclusion: The Bureau's role

The Committee intends that the Bureau take the lead role in environmental data collection and analysis, a role which will yield the following generic functions:

Identifying a comprehensive and standardized set of environmental quality measures on which to report, including traditional indices of air and water quality, as well as measures of wetland acreages, stratospheric ozone concentrations, and groundwater pollution.

Promulgating guidelines for the collection of data required for these measurements;

Establishing quality assurance procedures and ensuring timely reporting by the collecting agencies to the Bureau; and

Reporting this information and any accompanying analysis to the President by way of the Annual Environmental Statistics Report and periodic reports on conditions and trends.

INDEPENDENCE OF THE BUREAU

Another concern raised about the Bureau itself relates to the use of the word "independent" to characterize its status in the new Department. By the term independent, the Committee means that the Bureau will not be subject to political pressure in any of its activities, including the collection, compiling, and analysis of data, the filing of any reports, or the funding of any of its activities. In fact, the Committee would strongly encourage that a separate line item be established in the Federal Budget to accommodate funding for this new entity.

With respect to the Bureau's activities in relation to any other information gathering agency of government, the Committee intends that there not be duplication of effort and that, wherever possible and convenient, the Bureau obtain relevant data (if their quality can be assured) from other agencies which may possess them.

VIII. Regulatory Impact

Paragrah 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out the bill."

The enactment of this bill would not have any new significant regulatory impact on the public. Any new reporting or recordkeeping provisions are indirectly applied by the bill because they are:

(1) Generally intramural, affecting primarily the Department itself;

(2) Information or data collection related to existing statutory purposes, and;

(3) Only indirectly implied in the provisions of the bill such as found in section 208(a), directing the Bureau of Environmental Statistics to identify information gaps [in existing statutory information systems] and to collect such information. The bill envisions certain future policy developments which may lead to new regulatory impacts, such as a global greenhouse gas reduction treaty negotiated under Title IV. However, if such a

treaty leads to a regulatory impact on the public, it would not be a direct result of this bill, but would fall under the substantive statutory authority of other laws, the Clean Air Act for example.

As in the Department of Veterans Affairs elevation bill, this bill provides several departmental and governmental reporting requirements. The Bureau of Environmental Statistics is to promulgate guidelines under section 208(a)(1)(B), report and publish studies under section 208(a)(1)(A) and (a)(1)(E), and submit an annual report under section 208(c).

The Secretary of the Environment reports implementation costs under section 209(c), ...es an annual international environmental report under section 503(a)(2)(3), and the Commission on Improving Environmental Protection must report its findings and recommendations under section 502. All of these reports are intergovernmental functions not having a direct significant impact on the public and no significant impact on governmental agencies.

The bill establishes certain information and data collection responsibilities. The Bureau has long-term research implications under sections 101(3) and 208(a)(1)(G), and general collection authority under section 208(a)(1)(A), (a)(1)(C) and (a)(1)(F). The Department has monitoring and data collection duties under section 405. However, all of these data, information, and monitoring are related to the implementation of existing environmental statutes. These collection functions therefore impose no significant new regulatory burdens. Indeed, the bill provides many safeguards [such as section 208(a)(1)(C)] and is subject to the Paperwork Reduction Act and other applicable statutory safeguards.

The bill produces no new regulatory programs. There are some indirect, potential, but not significant, regulatory responsibilities associated with certain specific provisions. The Bureau will regulate information collection grants under section 208(a)(1)(B) and promulgate information collection guidelines under section 208(a)(1)(B). The Department will issue standards for advisory groups under section 210(d) regulate contractors under section 211, and establish regulatory recommendations (with the other departments) for international lending programs under section 402. As mentioned earlier, international agreements under section 404 have no direct regulatory impacts created through the authority of this bill.

It is also important to note that the basic regulatory functions of the Department are not altered by this bill. For example, the major functions listed under section 204(b) and continued under section 212(g) remain substantially the same. In addition, Title V makes the Commission on Improving Environmental Protection responsible for examining and making recommendations "on new or modified institutional arrangements, processes, or regulations that would improve the integration and delivery of Federal environmental protection, research, and planning programs" [section 503]. One of the duties clearly assigned to this Commission is therefore to recommend regulatory efficiency improvements including the impact of potentially inconsistent regulatory programs. For these reasons, the bill does not cause any substantial new regulatory impact on the public.

IX. Effect on Current Law

Paragraph 12 of the rule XXVI of the Standing Rules of the Senate requires that all bills reported out of committee include a discussion of changes in existing law made by the bill. A general discussion follows:

Section 203(b)(3).—This section states "notwithstanding any other provision of law," the Secretary may delegate any functions "including the making of regulations" to such officers and employees as necessary. This provision repeals other provisions of law, which in some way limit the Secretary's authority to delegate functions or job responsibilities. For example, the provision in the Clean Air Act, 42 U.S.C. Section 7601, that disallows the Administrator of EPA the right to delegate his duty to make regulations would be overridden in the case of Section 203(b)(3) of S. 2006.

Section 203(f).—This section states "in addition to exercising other international responsibilities under existing provisions of law" the Secretary of State in carrying out diplomatic functions related to protecting the environment and in providing technical assistance to foreign countries and international bodies. The above reference to other legal responsibilities in the international sphere makes clear that the departmental legislation does *not* repeal other existing provisions of law.

Section 204(d).—This section states that presidential appointees of the EPA, e.g., the Administrator, the Deputy Administrator, etc., need not be renominated or reconfirmed when redesignated the Secretary, Deputy Secretary, etc. of the Department of the Environment. To the extent the Vacancy Act (5 U.S.C. Section 3347) would have required that presidential appointees be renominated and reconfirmed, section 204(d) renders the Vacancy Act inapplicable in this case.

Section 205(c).—This section states that a certain percentage of Deputy Assistant Secretaries must be filled in the career Senior Executive Service (SES) and that the Deputy Assistant Secretary performing personnel management functions must be a career SESer. This provision augments the Civil Service Reform Act. To the extent any provision of the Civil Service Reform Act is to the contrary it is preempted by the explicit language of section 205(c).

Section 208 (a)(2) and (3).—These sections state the confidentiality provisions applicable to the Bureau of Environmental Statistics. Subsection (a)(2) states that the confidentiality provisions of other statutes, which authorize the collection of information, govern as regards protection of confidentiality respecting confidential business information and trade secret information. Section 208(a)(2) lists such statutes as including, but not limited to, the following:

(1) Section 14 of the Toxic Substances Control Act (15 U.S.C. Section 2613);

(2) Section 2 (h) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136h);

(3) Section 114(c) of the Clean Air Act (42 U.S.C. Section 7414(c) and;

(4) Section 1905 of Title 18 U.S.C.

Subsection (3) to Section 208(a) in turn sets out a more inclusive prohibition from disclosure than the confidentiality provisions in

section (2). As worded, section (a)(3) assures submitters that data provided by persons to the Bureau may not be released to the public in a manner that permits the information provided by any persons to be identified. Thus, for any information the Bureau publishes or any information upon which a publication is based, the Bureau will be able to protect any information that identifies the submitter. Persons under subsection (3) are corporations, individuals, and other, non-governmental entities. However, similar data provided to other components of the Department under the authority of other statutes administered by the Department would still be publicly available as provided under those other statutes.

To the extent subsection (a)(3) sets up a stricter test for protecting private information, it controls over the confidentiality provisions of other statutes cited in subsection (a) (2), *provided* the data at issue was submitted to the Bureau of Environmental Statistics for its purposes and not to other components of the Department.

Section 209.—This section states that "notwithstanding section 3134 (d) of title 5 U.S.C.," the number of SES positions in the Department filled by noncareer appointees may not exceed 12 per cent of the total number of senior executives employed in SES positions in the Department at the end of a given fiscal year. Accordingly, the section in 3134 (d) that allows all other executive departments (except the Department of Veterans Affairs) up to 25 percent noncareer appointees is not applicable.

The departmental legislation otherwise expressly amends other statutes in Section 212—References; Section 213—Savings Provisions; Section 214—Conforming Amendments; and Section 210(b)(2) pertaining to the criminal penalty for unauthorized use of the Seal of the Department of the Environment.

X. Changes in Existing Law

Specific changes to current law follow (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

Title 5, United States Code

* * * * * * *

PART I—THE AGENCIES GENERALLY

* * * * * * *

CHAPTER 1—ORGANIZATION

§ 101. Executive Departments

The Executive Departments are:
The Department of State.
The Department of the Treasury.
The Department of Defense.
The Department of Justice.
The Department of the Interior.

The Department of Agriculture.
The Department of Commerce.
The Department of Labor.
The Department of Health and Human Services.
The Department of Housing and Urban Development.
The Department of Transportation.
The Department of Energy.
The Department of Education.
The Department of Veterans' Affairs.
The Department of the Environment.

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PART III—EMPLOYEES

Subpart D—Pay and Allowances

* * * * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

Subchapter II—Executive Schedule Pay Rates

§ 5312. Positions at level I

Level of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.
Secretary of the Treasury.
Secretary of Defense.
Attorney General
Secretary of the Interior.
Secretary of Agriculture.
Secretary of Commerce.
Secretary of Labor.
Secretary of Health and Human Services.
Secretary of Housing and Urban Development.
Secretary of Transportation.
United States Trade Representative.
Secretary of Energy.
Secretary of Education.
Special Assistant for Agricultural Trade and Food Aid.
Secretary of Veterans' Affairs.
Secretary of the Environment.
Director of the Office of Management and Budget.
Director of National Drug Control Policy.

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate de-

termined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.
Deputy Secretary of State.
Administrator, Agency for International Development.
Administrator of the National Aeronautics and Space Administration.
Deputy Secretary of Veterans' Affairs.
Deputy Secretary of the Treasury.
Deputy Secretary of Transportation.
Chairman, Nuclear Regulatory Commission.
Chairman, Council of Economic Advisers.
Chairman, Board of Governors of the Federal Reserve System.
Director of the Office of Science and Technology.
Director of the United States Arms Control and Disarmament Agency.
Director of the United States Information Agency.
Director of Central Intelligence.
Secretary of the Air Force.
Secretary of the Army.
Secretary of the Navy.
Administrator, Federal Aviation Administration.
Director of the National Science Foundation.
Deputy Attorney General.
Deputy Secretary of Energy.
Deputy Secretary of Agriculture.
Deputy Secretary of the Environment.
Director of the Office of Personnel management.
Administrator, Federal Highway Administration.
Administrator of the Environmental Protection Agency.
Under Secretary of Defense for Acquisition.
Deputy Secretary of Labor.
Deputy Director of the Office of Management and Budget.

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Deputy Director of the Office of Personnel Management.
Under Secretary of Agriculture for International Affairs and Commodity Programs.
Director, Institute for Scientific and Technological Cooperation.
Under Secretary of Agriculture for Small Community and Rural Development.
Administrator, Maritime Administration.
Executive Director Property Review Board.
[Deputy Administrator of the Environmental Protection Agency.]

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Deputy Administrator of General Services.
Associate Administrator of the National Aeronautics and Space Administration.
Assistant Administrators, Agency for International Development (6).
Regional Assistant Administrators, Agency for International Development (4).
Under Secretary of the Air Force.
Under Secretary of the Army.
Under Secretary of the Navy.
Assistant Secretaries of Agriculture (7).
Assistant Secretaries of Commerce (11).
Assistant Secretaries of Defense (11).
Assistant Secretaries of the Air Force (8).
Assistant Secretaries of the Army (5).
Assistant Secretaries of the Navy (4).
Assistant Secretaries of Health and Human Services (5).
Assistant Secretaries of the Interior (6).
Assistant Attorneys General (10).
Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.
Assistant Secretaries of State (15).
Assistant Secretaries of the Treasury (7).
Members, United States International Trade Commission (5).
Assistant Secretaries of Education (6).
General Counsel, Department of Education.
Inspector General, Department of Education.
Director of Civil Defense, Department of the Army.
Secretary of the Environment.

§ 19. Title 3, United States Code. Vacancy in offices of both President and Vice President; officers eligible to act

(d)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, Secretary of Veterans' Affairs, Secretary of the Environment.

Government Organizations

* * * * * * *

* * * General Counsel of the Department of Energy.

Administrator, Economic Regulatory Administration, Department of Energy.

Administrator, Energy Information Administration, Department of Energy.

Inspector General, Department of Energy.

Director, Office of Energy Research, Department of Energy.

Assistant Secretary of Labor for Mine Safety and Health.

Members, Federal Mine Safety and Health Review Commission.

President, National Consumer Cooperative Bank.

Assistant Secretary for International Narcotics matters, Department of State.

Inspector General, Department of Health and Human Services.

Inspector General, Department of Agriculture.

Special Counsel of the Merit Systems Protection Board.

Inspector General, Department of Housing and Urban Development.

Chairman, Federal Labor Relations Authority.

Inspector General, Department of Labor.

Inspector General, Department of Transportation.

Inspector General, Veterans' Affairs.

Inspector General, Department of the Environment.

Deputy Director, Institute for Scientific and Technological Cooperation.

Director of the National Institute of Justice.

Director of the Bureau of Justice Statistics.

Chief Counsel for Advocacy, Small Business Administration.

Inspector General, Department of Defense.

Assistant Administrator for Toxic Substances, Environmental Protection Agency.

Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.

Assistant Administrators, Environmental Protection Agency (8).

Director of Operational Test and Evaluation, Department of Defense.

Administrator of the Health Care Financing Administration.

Director, National Institute of Standards and Technology, Department of Commerce.

Assistant Directors, United States Arms Control and Disarmament Agency (4).

Inspector General, United States Information Agency.

Inspector General, Department of State.

Director of Defense Research and Engineering.

Ambassadors at Large.

Commissioner, National Center for Education Statistics.

Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.

Inspector General, Department of Commerce.

Inspector General, Department of the Interior.
Inspector General, Department of Justice.
Inspector General, Department of the Treasury.
Inspector General, Agency for International Development.
Inspector General, Environmental Protection Agency.
Inspector General, Federal Emergency Management Agency.
Inspector General, General Services Administration.
Inspector General, National Aeronautics and Space Administration.
Inspector General, Nuclear Regulatory Commission.
Inspector General, Office of Personnel Management.
Inspector General, Railroad Retirement Board.
Inspector General, Small Business Administration.
Assistant Secretaries, Department of Veterans' Affairs (6).
General Counsel, Department of Veterans' Affairs.
Director of the National Cemetery System.
Commissioner of Food and Drugs, Department of Health and Human Services.
Chairman, Board of Veterans' Appeals.
Associate Director for National Drug Control Policy, Office of National Drug Control Policy.
Administrator, Office of Juvenile Justice and Delinquency Prevention.
Assistant Secretaries, Department of the Environment (10).
General Counsel, Department of the Environment.
Director, United States Marshals Service

§ 5316. Positions at level V.

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title.
* * * General Counsel, National Oceanic and Atmospheric Administration.
Members, Federal Labor Relations Authority (2) and its General Counsel.
Additional officers, Institute for Scientific and Technological Cooperation (2).
Additional officers, Office of Management and Budget (6).
Associate Deputy Secretary, Department of Transportation.
Chief Scientist, National Oceanic and Atmospheric Administration.
Director, Indian Health Service, Department of Health and Human Services.
Director of the Bureau of Environmental Statistics, Department of the Environment.
Executive Director of the Interagency Committee on Global Environmental Change.
Executive Director of the Commission on Improving Environmental Protection.

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

CHAPTER 33—EMBLEMS, INSIGNIA AND NAMES

Sec.
700. Desecration of the flag of the United States; penalties.
701. Official badges, identification cards, other insignia.
702. Uniform of armed forces and Public Health Service.
703. Uniform of friendly nation.
704. Military medals or decorations.
705. Badge or medal of veterans' organizations.
706. Red Cross.
707. 4-H Club emblem fraudulently used.
708. Swiss Confederation coat of arms.
709. False advertising or misuse of names to indicate Federal agency.
710. Cremation urns for military use.
711. "Smokey Bear" character name.
711a. "Woodsy Owls" character, name, or slogan.
712. Misuse of names, words, emblems, or insignia.
713. Use of likenesses of the great seal of the United States, and of the seals of the President and Vice President.
[714. Repealed.]
715. "The Golden Eagle Insignia".
716. Department of the Environment seal.

XI. COST ESTIMATE OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 14, 1990.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2006, the Department of the Environment Act of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2006.

2. Bill title: The Department of the Environment Act of 1990.

3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs. February 27, 1990.

4. Bill purpose: S. 2006 would elevate the Environmental Protection Agency (EPA) to a cabinet-level Department of the Environment and create within the department a Bureau of Environmental Statistics. The measure would also establish an interagency committee to coordinate federal policies regarding global environmental change and a commission to examine ways to improve the federal government's ability to protect the environment. Finally, the bill would encourage the United States to promote efforts to address international environmental concerns.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Estimated authorization level	7.1	11.7	6.8	6.9	6.9
Estimated outlays	6.3	11.0	7.3	7.2	7.5

The cost of this bill would fall within budget function 300.

Basis of estimate

Elevate the Environmental Protection Agency to Cabinet Level: The cost of making EPA an executive cabinet-level agency should be less than $30,000 a year. This amount represents the costs of salary increases for some senior positions that would be required as a result of the change in agency status. The bill would also create one additional Assistant Secretary position. CBO estimates that this position and associated staff positions would cost about $500,000 annually. According to EPA, stationery bearing the new departmental letterhead would be ordered only as existing supplies are exhausted, and signs on EPA facilities would be replaced gradually only as required by existing plans for facilities.

Establishment of the Bureau of Environmental Statistics: S. 2006 would establish this independent bureau within the Department of the Environment to gather and coordinate environmental data, promulgate guidelines to standardize the collection of data, and prepare certain reports. The measure would also establish an Advisory Council on Environmental Statistics. The bill would authorize the appropriation of $2.8 million in 1991, $5.4 million in 1992, and such sums as may be necessary in subsequent years for these activities.

Establishment of the Interagency Committee on Global Environmental Change: Title III would create this committee within the Executive Office of the President and provide it with cabinet-level status. The committee would operate under an executive director and employ up to 10 staff members. CBO estimates that the annual operating costs of the committee would range from $750,000 to $900,000.

Environmental Role of the United States in International Organizations: Title IV would encourage the secretaries of various departments to provide instructions to multilateral development banks and to convene international meetings on environmental topics. CBO estimates that the costs of each international meeting would range up to $5 million. However, because the bill does not require these meetings to be held, these potential costs are not included above.

Establishment of the Commission on Improving Environmental Protection: Title V would create a 13-member commission to examine and make recommendations on measures to improve the ability of the United States to protect the environment. The commission would be required to submit an interim report within one year and a final report within two years of the effective date of the title. The bill would authorize the appropriation of $3 million in 1991 and $5 million in 1992 to support the commission's activities.

6. Estimated cost to State and local Governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On June 19, 1989, the Congressional Budget Office prepared an estimate of the cost of H.R. 534, as introduced, for the House Committee on Government Operations. This bill would have established EPA as an executive department, but did not contain additional provisions, such as those establishing a Bureau of Environmental Statistics, an Interagency Committee on Global Environmental Change, and a Commission on Improving Environmental Protection. Therefore, CBO estimated that H.R. 534 would not have a significant budgetary impact.

On February 27, 1990, CBO prepared an estimate of the cost of S. 2006, as introduced and referred to the Senate Committee on Governmental Affairs. The costs estimated for that version of the bill were the same as those projected for the reported version.

9. Estimate prepared by: Laura Carter (226–2860).

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF MR. ROTH

The Department of the Environmental Act of 1990, S. 2006, is a thoughtful piece of bipartisan legislation, the product of effective cooperation. Throughout the hours of negotiations on the details of this bill, we have always had a common goal—to create a government institution that best serves and protects the environment and the citizens of this country. While always being concerned about unrestricted growth of the Federal Government, I have been a fully supportive partner with the Chairman of the Governmental Affairs Committee, Senator Glenn, and the Bush Administration in the formulation of S. 2006. I am confident that this biil does not symbolize rampant Government growth, but embodies concepts that are both important, timely and necessary.

In addition to working closely with the Administration on this bill, we have received valuable information, insight and recommendations from other interested parties: the EPA, GAO, and many of the leading environmental groups. Many of their comments are reflected in the reported version of S. 2006.

A Department of the Environment puts environmental concerns at the President's Cabinet table and ensures that these concerns are brought up at appropriate times. For example, in a discussion involving transportation, air quality concerns might arise; in a debate regarding agriculture, pesticide exposure may well be brought up, and in international negotiations, environmental matters are now common. The new Secretary of the Environment will be at a ministerial level on par with Ministers of the Environment in other countries. His voice, in concert with that of the Secretary of State, Treasury, and Commerce, will make sure that no country attains an economic advantage because they are willing to conduct environmentally "dirty" business.

I know that each member of the Committee has a true appreciation for the delicate nature of the environment. Some members of the Committee have deep personal concerns about the cleanliness of the Great Lakes; others in maintaining the beauty of the White Mountains of northern New England and the Alaskan wilderness areas; or, for instance, my personal feelings about the ecology of the Delaware River, Bay and its wetlands. I believe this bill represents a golden opportunity for each member of Congress to establish the preservation of the environment as a national priority into the future. The Department of the Environment that we help create today will ensure that the environmental concerns of our individual States become part of a national policy to achieve a cleaner world.

ADDITIONAL VIEWS OF MR. BINGAMAN

As a cosponsor of the original bill, I strongly support the basic purpose of S. 2006 in elevating the Environmental Protection Agency to a Cabinet-level Department of the Environment. However, I have serious concerns about the language establishing the Bureau of Environmental Statistics. I believe that the legislation is seriously flawed, especially with regard to the Bureau's functions, its independence and its ability to protect the confidentially of data.

The Committee report attempts to clarify that the Bureau functions are statistical in nature and not policy oriented. This is an important distinction but one that I am concerned is not reflected in the actual legislative language. The legislation needs to make it more explicit that the Bureau is a statistical agency, not one involved in policy.

The report also seeks to strengthen the Bureau's independence and confidentiality provisions. However, the legislation is deficient in these areas as well. The statutory language on confidentiality appears to provide confidentiality only for information published by the Bureau as part of its measures of environmental quality. The language does not provide protection for data collected by the Bureau and does not restrict the release of confidential data by other means. Additional language in the bill is simply a restatement that data collected under particular statutes continue to be subject to the confidentially and public access requirements of those statutes. This does not provide protection to confidential data collected by the Bureau under its general mandate. While well intentioned, I believe these provisions fall short of providing the confidentially of data necessary for the Bureau to operate in a credible manner.

The legislation also lacks protection from political interference in the Bureau's statistical activities. To the extent that the Bureau is involved in policy activities, such activities should be under the supervision and direction of Secretary and the President. However, purely statistical functions—which should be, in my opinion, the only functions of the Bureau—need to be protected from interference by policy makers. It is, I believe, important that statistical data be an unbiased source of information for policy makers. If the unbiased nature of environmental data can not be guaranteed, the credibility of the data is naturally suspect and the operations of the Bureau potentially tainted. This serves no one's interest and undermines the rational for having a statistical bureau in the first place.

JEFF BINGAMAN.

APPENDIX

Environmental Protection Agency

Section 1. Establishment of Agency.—(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the "Agency".

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the Executive Schedule Pay Rates (5 U.S.C. 5313).

Reorganization Plans

APPENDIX 1: REORGANIZATION PLAN NUMBER 3 OF 1970

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate.

Sec. 2. Transfers to Environmental Protection Agency.—(a) There are hereby transferred to the Administrator:

(1) All functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered through the Federal Water Quality Administration, all functions which were transferred to the Secretary of the Interior by Reorganization Plan No. 2 of 1966 (80 Stat. 1608), and all functions vested

in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by provisions of law amendatory or supplementary thereof.

(2)(i) The functions vested in the Secretary of the Interior by the Act of August 1, 1958, 72 Stat. 479, 16 U.S.C. 742d-1 (being an Act relating to studies on the effects of insecticides, herbicides, fungicides, and pesticides upon the fish and wildlife resources of the United States), and (ii) the functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered by the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(3) The functions vested by law in the Secretary of Health, Education, and Welfare or in the Department of Health, Education and Welfare which are administered through the Environmental Health Service, including the functions exercised by the following components thereof:

(i) The National Air Pollution Control Administration

(ii) The Environmental Control Administration:

(A) Bureau of Solid Waste Management.

(B) Bureau of Water Hygine,

(C) Bureau of Radiological Health,

except that functions carried out by the following components of the Environmental Control Administration of the Environmental Health Service are not transferred: (i) Bureau of Community Environmental Management, (ii) Bureau of Occupational Safety and Health, and (iii) Bureau of Radiological Health, insofar as the functions carried out by the latter Bureau pertain to (A) regulation of radiation from consumer products, including electronic product radiation, (B) radiation as used in the healing arts, (C) occupational exposures to radiation, and (D) research, technical assistance, and training related to clauses (A), (B), and (C).

(4) The functions vested in the Secretary of Health, Education and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 346, 346a, and 348, together with authority, in connection with functions transferred, (i) to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement, and (ii) to provide technical assistance to the States and conduct research under the Federal Food, Drug, and Cosmetic Act, as amended, and the Public Health Service Act, as amended.

(5) So much of the functions of the Council on Environmental Quality under section 204(5) of the National Environmental Policy Act of 1969 (Public Law 91-190, approved January 1, 1970, 83 Stat. 855), as pertains to ecological systems.

(6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, administered through its Division of Radiation Protection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(7) All functions of the Federal Radiation Council (42 U.S.C. 2021(h)).

(8) (i) The functions of the Secretary of Agriculture and the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135–135K), (ii) the functions of the Secretary of Agriculture and the Department of Agriculture under section 408(l) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346a(l), and (iii) the functions vested by law in the Secretary of Agriculture and the Department of Agriculture which are administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(9) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Administrator of the functions transferred by those provisions or related primarily to those functions. The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions and (2) the functions vested in the Secretary of the Interior and the Secretary of Health, Education and Welfare by section 169(d)(1)(B) and (3) of the Internal Revenue Code of 1954 (as enacted by section 704 of the Tax Reform Act of 1969, 83 Stat. 668); but shall be deemed to exclude the transfer of the functions of the Bureau of Reclamation under section 3(b)(1) of the Water Pollution Control Act (33 U.S.C. 466a(b)(1)).

(b) There are hereby transferred to the Agency:

(1) From the Department of the Interior, (i) the Water Pollution Control Advisory Board (33 U.S.C. 466f), together with its functions, and (ii) the hearing boards provided for in sections 10(c)(4) and 10(f) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466g(c)(4); 466g(f). The functions of the Secretary of Health, Education and Welfare with respect to being a member and the Chairman of that Board are hereby transferred to the Administrator.

SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS.—The Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer, or by any organizational entity or employee, of the Agency.

SEC. 4. INCIDENTAL TRANSFERS.—(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held available, or to be made available in connection with the functions transferred to the Administrator or the Agency by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Agency at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct any by such agencies as he shall designate.

SEC. 5. INTERIM OFFICERS.—(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator, authorize any such person to act as Assistant Administrator, and authorize any such person to act as the head of any principal constituent organizational entity of the Administration.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 6. ABOLITIONS.—(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Federal Water Quality Administration in the Department of the Interior (33 U.S.C. 466–1).

(2) The Federal Radiation Council (73 Stat. 690; 42 U.S.C. 2021(h)).

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of the Interior in the case of the Federal Water Quality Administration and by the Administrator of General Services in the case of the Federal Radiation Council.

SEC. 7. EFFECTIVE DATE.—The provisions of this reorganization plan shall take effect sixty days after the date they would take effect under 5 U.S.C. 906(a) in the absence of this section.

○